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No. 8] NEW DELHI, SATURDAY, FEBRUARY 24, 1990/PHALGUNA 5, 1911

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके
Separate Faging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांख्यिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 9 फरवरी, 1990

स्टाम्प

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 9th February, 1990

ORDER

STAMPS

का. प्र. 446.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एन.डी.आर. उम. ग्यु. को मनाफ करती है जो सेवानिवृत्त राष्ट्रीय विकास कोष (एन.डी.आर. कोष) जारी किए जाने वाले उम. ग्यु. और अन्य वस्तुओं (49.90 करोड़ रु.) कोष के कुल मूल्य के "11.50 प्रतिशत एम. सी. डी. सी. श्रृंखला, 2010 (28वीं प्रवृत्ति)" के रूप में दी जाएगी 100-100 रु. के मूल्य के वचन-पत्रों के रूप में बंधनपत्रों पर उक्त अधिनियम के अंतर्गत प्रसारित है।

[सं. 3/90-स्टा. का. प्र. 33/10/90-वि. वरु]
वा. के. स्वामिनाथन, उपायुक्त, वित्त

S.O. 446.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes of the value of Rs. 100.00 each decided as "11.50% N.C.D.C. Bonds, 2010 (XXVIIIth Series)" of the total value of rupees forty nine crores and ninety lakhs only (Rs. 49.90 crores) to be issued by National Corporation Development Corporation, New Delhi are chargeable under the said Act.

[No. 3/90-Stamps-F, No. 33/10/90-ST.]
V. K. SWAMINATHAN, Under Secy.

आदेश

नई दिल्ली, 15 फरवरी, 1990

का. घा. 447-भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश का. सं. 673/60/89 सी. शु. 8 तारीख 25-1-1989 यह निदेश देते हुए जारी किया था कि श्री मोहम्मद शेख, पुत्र स्वर्गीय सजरुद्दीन शेख, गांव बहारा, डाकघर कालाबाग थाना रघुनाथ गंज, जिला मुर्शिदाबाद को निरुद्ध कर लिया जाए और प्रेसीडेंसी जेल अलीपुर कलकत्ता में अभिरक्षा में रखा जाए ताकि उसे तस्करी के मास को लाने में जाने का काम करने और तस्करी के मास को छिपाने और रखने के अलावा तस्करी के मास का धंधा करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस महानिदेशक, पश्चिम बंगाल, कलकत्ता के समक्ष हाजिर हों।

[फा. सं. 673/60/89-सी. शु. 8]

ORDER

New Delhi, the 15th February, 1990

S.O. 447.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/60/89-Cus. VIII dated 25th January, 1989 under the said sub-section directing that Shri Mohammad Sheikh, son of late Sajaruddin Seikh, village Bahara, P.O. Kalabag, P. S. Raghunathgunj, District Murshidabad be detained and kept in custody in the Presidency Jail, Alipore, Calcutta with a view to preventing him from engaging in transporting the smuggled goods and dealing in smuggled goods otherwise than by engaging in concealing and keeping smuggled goods;

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the D.G. of Police, West Bengal, Calcutta within 7 days of the publication of this order in the official Gazette:

[F. No. 673/60/89-Cus. VIII]

आदेश

का. घा. 448-भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है उक्त उपधारा के अधीन आदेश का. सं. 673/87/89 सी. शु. 8 तारीख 27-2-1989 यह निदेश देने हुए जारी किया था कि श्री कार दे हमचन्द्रा जनार्दन, कमरा नं. 59, रो. एम. आर. एच. I, सेक्टर 7, वार्ड, नं. बम्बई 1 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बम्बई में अवरक्षित में रखा जाए ताकि उसे मास की तस्करी करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त बम्बई के समक्ष हाजिर हों।

[फा. सं. 673/87/89-सी. शु. 8]

ORDER

S.O. 448.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/87/89-Cus. VIII dated 27th February, 1989 under the said sub-section directing that Shri Karande Hemchandra Janardan, Room No. 59, Row-M, RH-1, Sector-7, Vashi, New Bombay, be detained and kept in custody in the Central Prison, Bombay with a view to preventing him from smuggling goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay within 7 days of the publication of this order in the Official Gazette.

[F. No. 673/87/89-Cus. VIII]

आदेश

का. घा. 449-भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश का. सं. 673/195/89 सी. शु. 8 तारीख 16-5-1989 यह निदेश देने हुए जारी किया था कि श्री वी. वरदराजन (उम्र 40 वर्ष) पुत्र वैक्का नायडू, उर्फ वैक्का, 34, बर्मा कॉलोनी, थिरु नगर, तिरुवनैकोइल, त्रिच्य 5 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, त्रिच्य में अभिरक्षा में रखा जाए ताकि उसे मास को तस्करी करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस महानिदेशक, पश्चिम बंगाल, कलकत्ता के समक्ष हाजिर हों।

[फा. सं. 673/195/89-सी. शु. 8]

ORDER

S.O. 449.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/195/89-Cus. VIII dated 16th May, 1989 under the said sub-section directing that Shri V. Vardarajan (Aged 40 years); S/o Vekpa Naidu @ Velaya, 34, Burma Colony, Thirunagar, Tiruvanaikol, Trichy-5 be detained and kept in custody in the Central prison, Trichy, with a view to preventing him from smuggling goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Director General of Police within 7 days of the publication of this order in the official Gazette.

[F. No. 673/195/89-Cus. VIII]

आदेश

का. आ. 450.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश का. सं. 673/242/89 सी. गु. 8 तारीख 18-5-1989 यह निदेश देते हुए जारी किया था कि श्री दिव्य बहादुर, पुत्र स्वर्गीय मान बहादुर, बागबारी, चक्रवर्त प्रहरीन, थाना सुतो त्रिका मुर्शिदाबाद को गिरफ्तार किया जाए और प्रेसीडेंसी जेल, कलकत्ता में अभिरक्षा में रखा जाए ताकि उसे तस्करी के माल का पाने से जाने का काम करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके।

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के मासिकीय राजपत्र में प्रकाशन के 7 दिनों के भीतर पुलिस महानिदेशक, पश्चिमी बंगाल, कलकत्ता के समक्ष हाजिर हों।

[फा. सं. 673/242/89-सी. गु. 8]

ORDER

S.O. 450.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/242/89-Cus. VIII dated 18th May, 1989 under the said sub-section directing that Shri Dil Bahadur son of late Man Mahadur, Bangabari, P.O. Ahiran, P.S. Suli, District Murshidabad be detained and kept in custody in the Presidency Jail, Calcutta with a view to preventing him from engaging in transporting smuggled goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Director General of Police within 7 days of the publication of this order in the official Gazette.

[F. No. 673/242/89-Cus. VIII]

का. आ. 451.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश का. सं. 673/258/89-सी. गु. 8 तारीख 18-5-1989 यह निदेश देती हुई जारी किया था कि श्री दिव्य बहादुर, पुत्र स्वर्गीय मान बहादुर, बागबारी, चक्रवर्त प्रहरीन, थाना सुतो त्रिका मुर्शिदाबाद को गिरफ्तार किया जाए और प्रेसीडेंसी जेल, कलकत्ता में अभिरक्षा में रखा जाए ताकि उसे तस्करी के माल का पाने से रोका जा सके।

आदेश

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके।

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के मासिकीय राजपत्र में प्रकाशन के 7 दिनों के भीतर पुलिस महानिदेशक, पश्चिमी बंगाल, कलकत्ता के समक्ष हाजिर हों।

[फा. सं. 673/258/89-सी. गु. 8]

ORDER

S.O. 451.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1)

of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/258/89-Cus. VIII dated 18th May, 1989 under the said sub-section directing that Mrs. Dilshad Firoz Rajwani, Hasanabad Compound, Zopda No. 6, Mount Road, Mazgaon, Bombay-10 be detained and kept in custody in the Central Prison, Bombay with a view to preventing him from smuggling goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay, within 7 days of the publication of this order in the official Gazette.

[F. No. 673/258/89-Cus. VIII]

आदेश

का. आ. 452.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश का. सं. 673/447/89-सी. गु. 8 तारीख 31-7-1989 यह निदेश देते हुए जारी किया था कि श्री मनसूख छगन लाल खट्ट खरीवाड, दमन को गिरफ्तार किया जाए और साबरमती केन्द्रीय कारागार, अहमदाबाद में अभिरक्षा में रखा जाए ताकि उसे माल की तस्करी करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके।

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के मासिकीय राजपत्र में प्रकाशन के 7 दिनों के भीतर पुलिस महानिदेशक, दमन और दीव प्रशासन के समक्ष हाजिर हों।

[फा. सं. 673/447/89-सी. गु. 8]

ORDER

S.O. 452.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/447/89-Cus. VIII dated 31st July, 1989 under the said sub-section directing that Shri Mansukh Chhaganlal Bhatt, Khariwad, Daman be detained and kept in custody in the Sabarmati Central Prison, Ahmedabad, with a view to preventing him from smuggling goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the I.G. of Police, Daman & Diu Admin. within 7 days of the publication of this order in the official Gazette.

[F. No. 673/447/89-Cus. VIII]

आदेश

का. आ. 453.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश का. सं. 673/512/89-सी. गु. 8 तारीख 6-9-1989 यह निदेश देते हुए जारी किया था कि श्री एम. शक्ति उस्ताद उर्फ एम. के. उस्ताद पुत्र स्वर्गीय श्री मोहम्मद अब्दुल रहमान (1) 2/38, मार्बे स्ट्रीट, विशाखरय जिला, रायचौर तमिलनाडु,

(ii) 2/44, नार्थ स्ट्रीट, किलाकाराय (iii) 37वां स्ट्रीट, रंगनाथपुरम, पश्चिम तम्बारम, मद्रास को निरुद्ध कर लिया जाए और केन्द्रीय कारागार मद्रास में अभिरक्षा में रखा जाए ताकि उसे ऐसा कोई भी कार्य करने से रोका जा सके जो विदेशी मुद्रा के संवर्धन के लिए हानिकारक हो।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके ;

3. अतः अब केन्द्रीय सरकार उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त मद्रास के समक्ष हाजिर हों।

[फा. सं. 673/512/89-सी. शु. 8]

ORDER

S.O. 453.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/512/89-Cus. VIII dated 6th September, 1989 under the said sub-section directing that Shri M. Khaliq Usman @ M. K. Usman, S/o Late Shri Mohamed Abdul Rahman, (i) 2/38, North Street, Kilakarai, Ramanad District, Tamil Nadu, (ii) 2/44, North Street, Kilakarai, (iii) 37 V. Street, Ranganathpuram, West Tambaram, Madras be detained and kept in custody in the Central Prison, Madras with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Madras within 7 days of the publication of this order in the official Gazette.

[F. No. 673/512/89-Cus. VIII]

आदेश

का. आ. 453.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश फा. सं. 673/512/89-सी. शु. 8 तारीख 13-9-1989 यह निदेश देते हुए जारी किया था कि श्री प्रेमराज पुरोहित (उम्र 40 वर्ष) पुत्र तेजा जी, नं. 7, 9वां क्रॉस रंगास्वामी टेम्पल स्ट्रीट, बंगलूर-560053, को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बंगलूर में अभिरक्षा में रखा जाए ताकि उसे ऐसा कोई भी कार्य करने से रोका जा सके जो विदेशी मुद्रा के संवर्धन के लिए हानिकारक हो।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके ;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस महानिदेशक, कर्नाटक, बंगलूर के समक्ष हाजिर हों।

[फा. सं. 673/521/89-सी. शु. 8]

ORDER

S.O. 454.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974)

issued under F. No. 673/521/89-Cus. VIII dated 13th September, 1989 under the said sub-section directing that Shri Premraj Purohit, (Aged 40 years) S/o Tejaee, No. 7, 9th Cross, Rangaswamy Temple Street, Bangalore-560053, be detained and kept in custody in the Central Prison, Bangalore, within a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the DG of Police, Karnataka, Bangalore, within 7 days of the publication of this order in the official Gazette.

[F. No. 673/521/89-Cus. VIII]

आदेश

का. आ. 455.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है उक्त उपधारा के अधीन आदेश फा. सं. 673/523/89-सी. शु. 8 तारीख 20-9-1989 यह निदेश देते हुए जारी किया था कि श्री रणजीत घोष उर्फ राणा घोष पुत्र जी. सी. घोष (i) बांगी पाड़ा, सिलीगुडी, दार्जीलिंग, (ii) सरकुलर रोड, दीमापुर, नागालैंड को निरुद्ध कर लिया जाए और केन्द्रीय जेल, कलकत्ता में अभिरक्षा में रखा जाए ताकि उसे तस्करी के माल को लाने ले जाने या छिपाने या रखने के काम के अलावा तस्करी के माल का धंधा करने से रोका जा सके ;

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके ;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त कलकत्ता के समक्ष हाजिर हों।

[फा. सं. 673/523/89-सी. शु. 8]

ORDER

S.O. 455.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/523/89-Cus. VIII dated 20th September, 1989 under the said sub-section directing that Shri Ranjit Ghosh @ Rana Ghosh, S/o G. C. Ghosh, (i) Dangi-para, Siliguri, Darjeeling, (ii) Circular, Road, Dimapur, Nagaland be detained and kept in custody in the Central Jail, Calcutta with a view to preventing him from dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Calcutta within 7 days of the publication of this order in the official Gazette.

[F. No. 673/523/89-Cus. VIII]

आदेश

का. आ. 456.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश फा. सं. 673/524/89-सी. शु. 8

तारीख 20-9-1989 यह निदेश देते हुए जारी किया था कि श्री लक्ष्मी महतो, पुत्र स्वर्गीय राम लखन महतो, गांव घाटो, डाकघर डालगिरी, मराय, जिला समस्तीपुर (बिहार) को निरुद्ध कर लिया जाए और प्रेसिडेंसी जेल, अलीपुर में अतिरक्षा में रखा जाए ताकि उसे तस्करी के माल को लाने से जाने का काम करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके,

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस महानिदेशक, बिहार, पटना के समक्ष हाजिर हों।

[फा. सं. 673/524/89-सी. गु. 8]

ORDER

S.O. 456.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/524/89-Cus. VIII dated 20th September, 1989 under the said sub-section directing that Shri Lachmi Mahato, S/o late Ram Lagan Mahato, Village Ghato, P.O. Dalsinghara, District Samastipur (Bihar) be detained and kept in custody in the Presidency Jail, Alipore, with a view to preventing him from engaging in transporting smuggled goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the D.G. of Police, Government of Bihar, Patna within 7 days of the publication of this order in the official Gazette.

[F. No. 673/524/89-Cus. VIII]

आदेश

का. आ. 456-भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारक अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश फा. सं. 673/531/89-सी. गु. 8 तारीख 19-9-1989 यह निदेश देते हुए जारी किया था कि श्री मोहम्मद अब्दुल खादर, पुत्र अब्दुल खादर, ए. बी. मंजिल, डाक थालंगारा, जिला कन्नूर, केरल राज्य को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बंगलूर में अतिरक्षा में रखा जाए ताकि उसे तस्करी के माल को लाने से जाने का कार्य से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके,

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिनों के भीतर पुलिस महानिदेशक, केरल, त्रिवेन्द्रम के समक्ष हाजिर हों।

[फा. सं. 673/531/89-सी. गु. 8]

ORDER

S.O. 457.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/531/89-Cus. VIII dated 19th Sep-

tember, 1989 under the said sub-section directing that Shri Mohamood Abdul Khader, S/o Abdul Khader, A. B. Manzil, Post Thalagara, Kasargod District, Kerala State be detained and kept in custody in the Central Prison, Bangalore within a view to preventing him from engaging in transporting smuggled goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the D.G. of Police, Kerala, Trivandrum within 7 days of the publication of this order in the official Gazette.

[F. No. 673/531/89-Cus. VIII]

आदेश

का. आ. 458-भारत सरकार ने संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारक अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश फा. सं. 673/534/89-सी. गु. 8 तारीख 19-9-1989 यह निदेश देते हुए जारी किया था कि श्री नारायण कुन्हम्बु पुत्र कुन्हम्बु तालाचरी हाउस 'डाक कन्नूर, जिला कन्नूर, केरल या श्री नारायण कुन्हम्बु वेटर, गुलाब नहर होटल (स्टार होटल के समीप) ग्रांट रोड बम्बई-9 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बंगलूर में अतिरक्षा में रखा जाए ताकि उसे तस्करी के माल लाने से जाने का काम करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके,

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिनों के भीतर पुलिस अधीक्षक, बम्बई/पुनिस महानिदेशक केरल के समक्ष हाजिर हों।

[फा. सं. 673/534/89-सी. गु. 8]

ORDER

S.O. 458.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/534/89-Cus. VIII dated 19th September, 1989 under the said sub-section directing that Shri Narayana Kunhambu, S/o Kunhambu, Thalacheri House, Post Cannanore, District Cannanore, Kerala Or Shri Narayana Kunhambu, Waiter, Gulab Nohar Hotel, (Near Star Hotel) Grant Road, Bombay-9 be detained and kept in custody in the Central Prison, Bangalore with a view to preventing him from engaging in transporting smuggled goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay/D.G. of Police, Kerala within 7 days of the publication of this order in the official Gazette.

[F. No. 673/534/89-Cus. VIII]

आदेश

का. आ. 459-भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारक अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश फा. सं. 673/537/89-सी. गु. 8

तारीख 19-10-1989 यह निवेश देते हुए जारी किया था कि श्री अब्दुल कादर मोहम्मद हनीफ (उम्र 25 वर्ष) 22, नारायणधुर स्ट्रीट, कमरा नं. 7, पहली मंजिल, बम्बई को निर्यात कर लिया जाए और केन्द्रीय कारागार बम्बई में अभिरक्षा में रखा जाए ताकि उसे ऐसा कोई भी कार्य करने से रोका जा सके जो विदेशी मुद्रा के संवर्धन के लिए हानिकारक हो।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके,

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निवेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के प्रासंगिक राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त, बम्बई के समक्ष हजरि हों।

[फा. सं. 673/597/89-सी. गु. 8]

कुलदीप सिंह, सचिव

ORDER

S.O. 459.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/597/89-Cus. VIII dated 19th October, 1989 under the said sub-section directing that Shri Abdul Kader Mohamed Hanif, (Aged 25 years) 22, Narayandhuru Street, Room No. 7, 1st Floor, Bombay, be detained and kept in custody in the Central Prison, Bombay with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay within 7 days of the publication of this order in the official Gazette.

[F. No. 673/597/89-Cus. VIII]

KULDIP SINGH, Under Secy.

आदेश संसद

नई दिल्ली, 24 फरवरी, 1990

फा. सं. 460.—केन्द्रीय सरकार, नियमित (व्यापारिक निर्यात एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैक्स जिओ फॉम सीबोरेटोरज (प्राइवेट) लिमिटेड, मयूर कुरपा, गणेश कॉलोनी, एच.एन. पैट, बैलारी-583101 को एस. उपाध्याय प्रमुखता में बिनिदिष्ट ऐथिल एल्कोहल (रेक्टिफाइड स्पिरिट ग्रेड-II) के निर्यात से पूर्व 19 जनवरी, 1990 से एक वर्ष की अवधि के लिए इन शर्तों के अधीन अभिकरण के रूप में मान्यता देती है कि संगठन कार्बनिक रसायनों के निर्यात (निरीक्षण) नियम, 1966 के नियम 4 के उपनियम (4) के अंतर्गत निर्यात निरीक्षण परिषद के किसी भी अधिकारी को निरीक्षण प्रमाणपत्र जारी करने के लिए अभिकरण द्वारा अपनाई गई निरीक्षण प्रणाली का जांच करने के लिए पर्याप्त सुविधाएं देगा।

प्रमुखता

1. ऐथिल एल्कोहल (रेक्टिफाइड स्पिरिट ग्रेड-II)

[फाइल नं. 5(4)/90-ईआरएण्ड ईए]

ए. क. चौधुरी, निदेशक

MINISTRY OF COMMERCE

New Delhi, the 24th February, 1990

S.O. 460.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a period of one year with effect from 19th January, 1990 M/s. Geo Chem Laboratories (Pvt.) Limited, Mathura Krupa, Ganesh Colony, S. N. Pet, Bellary-583101 as an agency for the inspection of Ethyl Alcohol (Rectified Spirit-Grade II) specified in the schedule annexed hereto prior to export subject to condition that the said agency shall give adequate facilities to any officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by the said agency in granting the certificate of inspection under sub-rule (4) of rule 4 of the Export of Organic Chemicals (Inspection) Rules, 1966.

SCHEDULE

1. Ethyl Alcohol (Rectified Spirit-Grade-II).

[F. No. 5(4)/90-EI&EP]

A. K. CHAUDHURI, Director

उद्योग मंत्रालय

(कम्पनी कार्य विभाग)

नई दिल्ली, 14 फरवरी, 1990

फा. सं. 461.—केन्द्रीय सरकार, कम्पनी अधिनियम, 1956 (1956 का 1) की धारा 25 का उपधारा (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निवेश देती है कि म्यून्ड्री चम्बर ऑफ़ कॉमर्स एंड इंडस्ट्री को, जो ऐसा निहाय है जिसे उक्त अधिनियम की धारा 25 के अधीन प्रमुखता प्रमुखता का दर्जा है, उसकी धारा 370 और धारा 372 के उपधारा के प्रवर्तन से वहाँ तक छूट प्राप्त होगी जहाँ तक उसका संबंध केन्द्रीय सरकार के पूर्व अनुमोदन की प्रणाली से है।

[फा. सं. 1/86/88-सी. एन.-8]

यू. पी. माथुर, निदेशक

MINISTRY OF INDUSTRY

(Department of Company Affairs)

New Delhi, the 14th February, 1990

S.O. 461.—In exercise of the powers conferred by sub-section (6) of section 25 of the Companies Act, 1956 (1 of 1956), the Central Government hereby directs that the Bombay Chamber of Commerce and Industry, a body to which a licence is granted under section 25 of the said Act, shall be exempt from the operation of the provisions of sections 370 and 372 thereof in so far as they relate to the requirement of prior approval of the Central Government.

[F. No. 1/6/88-CEV]

U. P. MATHUR, Director

ऊर्जा मंत्रालय

(कोयला विभाग)

नई दिल्ली, 16 फरवरी, 1990

का. प्र. 462—केन्द्रीय सरकार ने कोयला खार क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उपधारा (1) के अधीन भाग के राजपत्र भाग 2, खंड 3, उपखंड (ii), तारीख 28 फरवरी, 1987 में प्रकाशित भारत सरकार के ऊर्जा मंत्रालय (कोयला विभाग) की अधिसूचना सं. का. प्र. 543, तारीख 11 फरवरी, 1987 द्वारा उन अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिसरों की भूमि में निम्नलिखित गाय 1459.285 हेक्टर (लगभग) या 3605.92 एकड़ (लगभग) है कौयले का पूर्वेक्षण करने के अपने आणव की सूचना दी थी।

और केन्द्रीय सरकार ने, भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii), तारीख 19 अगस्त, 1989 में प्रकाशित भारत सरकार के ऊर्जा मंत्रालय कोयला विभाग की अधिसूचना सं. का. प्र. 1919, तारीख 20 जुलाई, 1989 द्वारा उक्त अधिनियम की धारा 7 की उपधारा (1) के अधीन 28 फरवरी, 1989 से प्रारम्भ होने वाली एक वर्ष की अवधि को उन अवधि के रूप में विनिर्दिष्ट किया था जिसके भीतर केन्द्रीय सरकार उक्त भूमि या ऐसी भूमि में या उन पर के किसी अधिकार का अर्जन करने के अपने आणव की सूचना देगी।

और केन्द्रीय सरकार का यह समाधान हो गया है कि उक्त भूमि के भाग में कोयला अधिप्राप्त है।

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदान अधिकारों का प्रयोग करते हुए उसमें संलग्न अनुसूची में वर्णित 811.100 हेक्टर (लगभग) या 2004.228 एकड़ (लगभग) गाय की भूमि में खनिजों का खनन, खदान, बोर करने, उनकी खुदाई करने और निकास करने, उन्हें प्राप्त करने, उन पर कार्य करने, उन्हें ले जाने के अधिकारों का अर्जन करने के अपने आणव की सूचना देती है।

टिप्पण. 1. उन अधिसूचना के संलग्न आने वाले क्षेत्र के रेखांक सं. एन. ई. सी. एल. : बो. एम. पो. : जो. एम. (परिवर्तित) : भूमि 58, तारीख 3 जनवरी, 1990 का निरीक्षण कन्स्ट्रक्शन गेजेशन (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउन्सिल हाउस स्ट्रीट, कलकत्ता में या दक्षिण पूर्व कोयला क्षेत्र लिमिटेड (राजस्थान अनुभाग), सीपल रोड, विनासपुर-495091 (मध्य प्रदेश) के कार्यालय में किया जा सकता है।

टिप्पण. 2. पूर्वोक्त अधिनियम की धारा 8 के उपबंधों की और ध्यान वाक्य किये जाता है, जिनमें निम्नलिखित उपबंध हैं ;
अर्जन के प्रति आक्षेप

"8. (1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत धारा 7 के अधीन अधिसूचना निकाली गई है, हितवृद्ध है, अधिसूचना के निकाले जाने के तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किसी अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकता।

सापेक्षिकता : इस धारा के अर्थात्तर्त यह आपत्ति नहीं मानो जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन संक्रियण करना चाहता है और ऐसी संक्रियण केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम प्राधिकारों को लिखित रूप में की जाएगी और सक्षम प्राधिकारों को स्वयं सुने जाने का या विधि व्यवस्था द्वारा सुनवाई का अवसर होगा और ऐसी सक्षम प्राधिकारों को सुनने के पञ्चायत और ऐसी अनिश्चित आंच, यदि कोई हो, करने के पश्चात् जो वह आवश्यक समझता है, वह या तो धारा 7 की उपधारा (1) के अधीन अधिसूचित भूमि के या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के लिखित टुकड़ों या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी निष्कर्षों और उद्देश्यों की गई कार्रवाई के अतिरिक्त सक्षम लिखित रिपोर्ट केन्द्रीय सरकार को उसके विनियमन विनियम के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितवृद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होता यदि भूमि या ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाने।"

टिप्पण. 3 केन्द्रीय सरकार ने कोयला नियंत्रक, 1, काउन्सिल हाउस स्ट्रीट, कलकत्ता को उक्त अधिनियम के अधीन सक्षम प्राधिकारों नियुक्त किया है।

अनुसूची

पिपरिया ब्लॉक

बोहिल्ला क्षेत्र

जिला गढ़डोल (मध्य प्रदेश)

खनन अधिकार

क्र. सं.	गांव	साधारण संख्या	वर्गमीटर	जिला	क्षेत्र हेक्टर में	टिप्पणियाँ
1.	मर्हामार	586	वर्गमीटर	गढ़डोल	52.500	भाग
2.	कूर्धा	105	वर्गमीटर	गढ़डोल	159.722	भाग
3.	किनारीकीप	510	वर्गमीटर	गढ़डोल	203.594	भाग
4.	लासपुर	665	वर्गमीटर	गढ़डोल	56.518	भाग
5.	सेमरिया	724	वर्गमीटर	गढ़डोल	154.890	भाग
6.	पिपरिया	416	वर्गमीटर	गढ़डोल	02.000	भाग
7.	कोटा	128	वर्गमीटर	गढ़डोल	181.876	भाग
		कुल			711.100	हेक्टर (लगभग)
		या			2004.228	एकड़ (लगभग)

ग्राम महीमार (भाग) में अजित किए जाने वाले प्लॉट संख्यांक :

11(भाग), 12(भाग), 148(भाग), 149(भाग), 150 से 164, 165 (भाग), 166 से 177, 178 (भाग), 183(भाग), 184 (भाग), 228(भाग) 229 से 240, 243 से 283, 285, 286, 291, 311, से 312, 314, और 367 (भाग) :

ग्राम कुमां (भाग) में अजित किए जाने वाले प्लॉट संख्यांक ..

1 से 104, 105 (भाग), 106 से 110, 111 (भाग), 113(भाग), और 114 से 135 :

ग्राम बिल रोकोप (भाग) में अजित किए जाने वाले प्लॉट संख्यांक ..

12(भाग), 13 से 65, 166(भाग), 167 से 198, 199 (भाग), 200 (भाग), 222, 223, 224(भाग), 255(भाग), 257(भाग), 263(भाग) 264(भाग), 265(भाग), 266 से 273, 274(भाग), 275 (भाग), 277(भाग), 278 से 282, 285 से 292।

ग्राम लालपुर (भाग) में अजित किए जाने वाले प्लॉट संख्यांक .

114(भाग), 115(भाग), 116, 117(भाग), 122(भाग), 126(भाग), 127 से 131, 132(भाग), 133 से 157, 158(भाग), 159 (भाग), 160(भाग), 185(भाग), 189(भाग), 190(भाग), 192(भाग), 382, 490(भाग), 491(भाग), 492(भाग), 493, 498(भाग), 499 (भाग), 500 से 505, 506(भाग), 507, 508, 509(भाग), 510(भाग), 569(भाग) 570(भाग), 571 से 580, 581 (भाग), 608, 625(भाग), 626(भाग) और 645 (भाग)

ग्राम सिमरिया (भाग) में अजित किए जाने वाले प्लॉट संख्यांक

1 से 110, 124 से 172, 178, 183(भाग), 194 से 235, 236(भाग), 237 से 251, 310, 311 (भाग), 312, 328(भाग), 329(भाग), 333 (भाग), 334(भाग), 335(भाग), 336(भाग), 372 से 393, 394, 399(भाग), 453 से 408 और 414 ।

ग्राम पिपरिया (भाग) में अजित किए जाने वाले प्लॉट संख्यांक

238 (भाग)

ग्राम कोटा (भाग) में अजित किए जाने वाले प्लॉट संख्यांक

1 से 56, 57(भाग), 58(भाग), 109(भाग), 110, 111, 112 (भाग), 113 (भाग), 143(भाग), 144(भाग), 145(भाग), 146 से 149 150(भाग), 151 से 168, 169(भाग) 177(भाग), 227(भाग) 228(भाग), 229, 230 से 237, 241 से 247 ।

सीमा वर्णन .

क-ख रेखा महीमार ग्राम में "क" बिन्दु से आरंभ होकर प्लॉट संख्यांक 11, 12, 149, 148, 165, 168, 183, 184, 316, 228, 367 से गुजरती हुई कुमां ग्राम में प्लॉट संख्यांक 105, 111, 112, 113 से गुजरती है । उसके पश्चात् प्लॉट संख्यांक 12 से होकर बिल रोकोप ग्राम में प्रवेश करती है । बिल रोकोप और कोटा की सम्मिलित सीमा के भाग के साथ-साथ चलती हुई प्लॉट संख्यांक 59, 227, 59, 228, 59, 58, 57, 56, 109, 113, 112 से होकर कोटा-ग्राम में प्रवेश करती है और "ख" बिन्दु पर मिलती है ।

ख-ग रेखा कोटा ग्राम में प्लॉट संख्यांक 112, 143, 145, 144, 147, 144, 177, 150, 169 को होकर गुजरती है और ग्राम कोटा सिमरिया पुटपुरा की जिमाधि पर "ग" बिन्दु पर मिलती है ।

ग-घ-ङ-च रेखा ग्राम सिमरिया पुटपुरा की सम्मिलित सीमा के साथ-साथ चलती हुई सिमरिया ग्राम की ओर चलती है और प्लॉट संख्यांक 107, 408, 108, 407, 404, 110, 124, 126, 254 की दक्षिणी सीमा के साथ-साथ चलती हुई प्लॉट संख्यांक 134, 135, 136, 137, 138, 252, 231, 250, 249, 247, 244, 243, 398, 241, 240, 239, 310, 312 की पूर्वी सीमा के साथ-साथ चलती हुई "च" बिन्दु पर मिलती है ।

च-छ-ज रेखा सिमरिया ग्राम में प्लॉट संख्यांक 399, 311, 236, 328, 329, 333, 336, 183 से होकर जाती है, अब प्लॉट संख्यांक 185, 178, 172, 171 को दक्षिणी सीमा के साथ-साथ चलती हुई सिमरिया-सिमरिया ग्राम की सम्मिलित सीमा के साथ-साथ भागत चलकर "ज" बिन्दु पर मिलती है ।

ज-झ रेखा पिपरिया ग्राम के प्लॉट संख्यांक 238 से होकर गुजरती है अब ग्राम बिल रोकोप में प्लॉट संख्यांक 277, 275, 255, 257, 256, 274, 264 263, 224, 199, 200, 166 से होकर जाती है और तत्पश्चात् लालपुर ग्राम के प्लॉट संख्यांक 581, 570, 569, 506, 509, 510, 498, 499, 492, 645, 191, 192, 490, 190, 191, 189, 183, 189, 158, 159, 160, 626, 115, 117, 132, 123, 126 में से प्रवेश करके "झ" बिन्दु पर मिलती है ।

झ-ञ रेखा प्लॉट सं. 126, 127, 128 की पश्चिमी सीमा के साथ-साथ चलकर लालपुर ग्राम से गुजरती है । अब महीमार ग्राम में प्लॉट सं. 314, 279, 278, 277, 276, 274, 273, 270, 267, 266, 242, 247, 288, 311, 153, 152, 151, 150, 12 की पश्चिमी सीमा के साथ-साथ चलकर आरंभिक बिन्दु "क" पर मिलती है ।

[क्रा. सं. 43015/23/86-पी.ए./एल. एस. इत्यादि]

बी. बी. राव, अधीक्षक सचिव

MINISTRY OF ENERGY

(Department of Coal)

New Delhi, the 16th February, 1990

S.O. 462.—Whereas by the notification of the Government of India in the Ministry of Energy, Department of Coal No. S.O. 543, dated the 11th February, 1987 published in the Gazette of India, Part-II, section 3, sub-section (ii) dated the 28th February, 1987 under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) the Central Government gave notice of its intention to prospect for coal in 1459.265 hectares (approximately) or 3605.92 acres (approximately) of the lands in locality specified in the Schedule annexed to that notification;

And whereas by the notification of the Government of India in the Ministry of Energy, Department of Coal S.O. No. 1919, dated the 20th July, 1989 published in the Gazette of India, Part II, Section 3, sub-section (ii) dated the 19th August, 1989 under sub-section (1) of section 7 of the said Act, the Central Government specified a further period of one year commencing from the 28th February, 1989 as the period within which the Central Government may give notice of its intention to acquire the said lands or any rights in or over such lands;

And whereas the Central Government is satisfied that coal is obtainable in a part of said lands;

Now, therefore in exercise of the powers conferred by sub-section (1) of section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the rights to mine, quarry, bore, dig and search for, win, work and carry away minerals in the lands measuring 811.100 hectares (approximately) or 2004.228 acres (approximately) described in the Schedule appended hereto;

Note 1.—The plan bearing No. SECL :BSP :GM (PROJ): LAND : 58 dated the 3rd January, 1990 of the area covered by this notification may be inspected in the Office of the Collector, Shahdol (Madhya Pradesh) or in the Office of the Coal Controller, 1, Council House Street, Calcutta, or in the office of the South Eastern Coalfields Limited (Revenue Sec-

tion), Seepat Road, Bilaspur-495001 (Madhya Pradesh).

Note 2.—Attention is hereby invited to the provisions of section 8 of the aforesaid Act, which provides as follows:

Objections to Acquisition:

“(8) (1) Any person interested in any land in respect of which a notification under section 7 has been issued may within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or of any rights in or over such land.

Explanation.—It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, either makes a report in respect of the land which has been notified under sub-section (1) of section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act.

Note 3.—The Coal Controller, 1 Council House Street, Calcutta has been appointed by the Central Government as the Competent authority under the Act.

SCHEDULE

PIPARIA BLOCK

JOHILLA AREA

DISTRICT-SHAHDOL (MADHYA PRADESH)

Mining Rights

Sl. No.	Village	General Number	Tahsil	District	Area in hectares	Remarks
1.	Mahimar	586	Bandhogarh	Shahdol	52.500	Part.
2.	Kuan	100	Bandhogarh	Shahdol	159.712	Part.
3.	Bilarikop	516	Bandhogarh	Shahdol	203.594	Part.
4.	Lalpur	665	Bandhogarh	Shahdol	56.518	Part.
5.	Semaria	524	Bandhogarh	Shahdol	154.890	Part.
6.	Piparia	416	Bandhogarh	Shahdol	02.000	Part.
7.	Kota	128	Bandhogarh	Shahdol	181.876	Part.

Total:-

811.100 hectares
(approximately)
OR
2004.228 acres
(approximately)

Plot numbers to be acquired in village Mahimar :—(part).

11(P), 12(P), 148(P), 149(P), 150 to 164, 165(P), 166 to 177, 178(P), 183(P), 184(P), 228(P), 229 to 240, 243 to 283, 285, 286, 291, 310 to 312, 314, and 367(P).

Plot numbers to be acquired in village Kuan (part) :—

1 to 104, 105(P), 106 to 110, 111(P), 113(P), and 114 to 185.

Plot numbers to be acquired in village Bilarikop (part) :—

12(P), 13 to 165, 166(P), 167 to 198, 199(P), 200(P), 222, 223, 224(P), 255(P), 257(P), 263(P), 264(P), 265(P), 266 to 273, 274(P), 275(P), 277(P), 278 to 282, 285 to 292.

Plot numbers to be acquired in village Lalpur (Part) :—

114(P), 115(P), 116, 117(P), 122(P), 126(P), 127 to 131, 132(P), 133 to 157, 158(P), 159(P), 160(P), 188(P), 189(P), 190(P), 191(P), 192(P), 337, 490(P), 491(P), 492(P), 493, 498(P), 499(P), 500 to 505, 506(P), 507, 508, 509(P), 510(P), 569 (P), 570(P), 571 to 580, 581(P), 603, 625(P), 626(P), & 645(P).

Plot numbers to be acquired in village Semaria (part) :—

1 to 110, 124 to 172, 178, 183(P), 184 to 235, 236(P), 237 to 254, 310, 310(P), 311(P), 312, 321(P), 329(P), 333(P), 334(P), 335(P), 336(P), 372 to 393, 398, 399(P), 403 to 408 and 414.

Plot numbers to be acquired in village Piparia (Part) :—

238(P).

Plot numbers to be acquired in village Kota (Part) :—

1 to 56, 57(P), 58(P), 102(P), 110, 111, 112(P), 113(P), 143(P), 144(P), 145(P), 146 to 149, 150(P), 151 to 168, 169(P), 177 (P), 227(P), 228(P), 229, 230 to 237, 241 to 247.

Boundary Description :—

- A-B Line starts from point 'A' in village Mahimar and passes through plot number 11, 12, 149, 148, 165, 168, 183, 184, 315, 228, 367 then proceeds in village Kuan through plot numbers 105, 111, 112, 113 then enter in village Bilarikop through plot number 12 proceeds partly along the common boundary of Bilarikop—Kota then enter in village Kota through plot numbers 59, 227, 59, 228, 59, 58, 57, 56, 109, 113, 112 and meets at point 'B'.
- B-C Line passes in village Kota through plot number 112, 143, 145, 144, 177, 144, 177, 150, 169 and meets on the trijunction point of villages Kota—Semaria—Putpura at Point 'C'.
- C-D-E-F. Line passes along the common boundary of villages Semaria—Putpura then proceeds in village Semaria and along the southern boundary of plot numbers 107, 408, 470, 404, 110, 124, 126, 254 then along the eastern boundary of plot numbers 134, 135, 136, 137, 138, 252, 251, 250, 249, 248, 247, 244, 243, 398, 241, 240, 239, 310, 312 and meets at point 'F'.
- F-G-H Line passes in village Semaria through plot numbers 399, 311, 236, 328, 329, 333, 336, 183 then along the southern boundary of plot numbers 185, 178, 172, 171 then partly along the common boundary of villages Semaria—Piparia and meets at point 'H'.
- H-I Line passes in village Piparia through plot number 238 then proceeds in village Bilarikop through plot numbers 277, 275, 255, 257, 265, 274, 264, 263, 224, 199, 200, 166 then enter in village Lalpur through plot numbers 581, 570, 567, 506, 507, 510, 498, 499, 492, 645, 491, 192, 490, 193, 191, 189, 188, 189, 158, 159, 160, 626, 115, 117, 132, 122, 126 and meets at point 'I'.
- I-A Line passes in village Lalpur along western boundary of plot numbers 126, 127, 128, then proceeds in village Mahimar along western boundary of plot numbers 314, 279, 278, 277, 276, 274, 273, 270, 267, 266, 242, 247, 288, 311, 153, 152, 151, 150, 12 and meets at the starting point 'A'.

[No. 43015/23/86-CA/ISW]

B.B. RAO, Under Secy.

भारत सरकार

नई दिल्ली, 24 जनवरी, 1990

MINISTRY OF LABOUR

New Delhi, the 24th January, 1990

वा.आ. 463 : उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, केन्द्रीय सरकार निदेशक, भ्रम व्यरो न्यायलय चण्डीगढ़ में अनुभाष अधिकाारी श्री हरिवन्दर सिंह को दिनांक 22-1-90 से 30-1-90 तक उत्प्रवासी संरक्षी, चण्डीगढ़ के सभी कार्यों को करने के लिए प्राधिकृत करती है।

[सं. ए-22012(1)/90-उत्प्र.]

प्रदीप सिंह, अध्वर सचिव

S.O. 463.—In exercise of the powers conferred by Section 5 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri Harvinder Singh, Section Officer, Labour Bureau, Chandigarh to perform all functions of Protector of Emigrants, Chandigarh in the office of Protector of Emigrants, Chandigarh from 22-1-90 to 30-1-90.

[No. A-22012/1/90-Emig.]

PRADEEP SINGH, Under Secy.

नई दिल्ली, 29 जनवरी, 1990

का. प्र. 464.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसूचन में केन्द्रिय सरकार इन्टरनेशनल एयरपोर्ट अथॉरिटी आफ इंडिया, प्राई. ऑ. प्राई. एयरपोर्ट, नई दिल्ली के प्रबंधन के सुब्ज निरीक्षणों और उनके कर्मचारियों के बीच, अनुसूचन में निदिष्ट औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिनियम, नई दिल्ली के पंचपट को प्रकाशित करना है, जो केन्द्रिय सरकार को 25-1-1990 को प्राप्त हुआ था।

New Delhi, the 29th January, 1990

S.O. 464.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of International Airport Authority of India, I.G.I. Airport, New Delhi, and their workmen, which was received by the Central Government on 25-1-1990.

ANNEXURE

Before Shri G. S. Kalra : Presiding Officer : Central Govt.
Industrial Tribunal: New Delhi

I.D. No. 46/83

1. Shri Ram Kumar
Shri Ram Kumar
2. Shri Nanu Ram,
3. Shri Brijpal Singh
4. Shri Guru Dutt
5. Shri Partap Singh
6. Shri Ashok Kumar
7. Shri Raj Kumar

Versus

The General Manager,
International Airport Authority of India,
I.G.I. Airport, New Delhi.

APPEARANCES :

Shri Jog Singh for the workman.

Dr. Anand Prawash for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11011/4/87-D.II(B) dated 21-3-88 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of International Airport Authority of India, New Delhi in terminating the services of the following employees from the dates shown against each is justified? If not to what relief the workmen concerned are entitled?"

- | | |
|------------------|----------|
| 1. Ram Kumar | 19-7-83 |
| 2. Nanu Ram | 19-7-83 |
| 3. Brijpal Singh | 30-3-83 |
| 4. Guru Dutt. | 11-4-83 |
| 5. Pratap Singh | 20-6-83 |
| 6. Ashok Kumar | 5-4-82 |
| 7. Raj Kumar | 7-6-83". |

There is not much dispute about the facts of this case. All the 7 claimants/workmen were employed on the project New International Terminal Complex (N.I.T.C.) of the

International Airport Authority, New Delhi, as daily rated Beldar/Chowkidars between the following periods.

S. No. Name	Date of 1st working day	Date of last working day
1. Ram Kumar	22-4-81	19-8-83
2. Nanu Ram	24-11-81	31-7-83.
3. Brij Pal Singh	15-6-82	3-3-83.
4. Guru Dutt	2-5-81	11-4-83
5. Partap Singh	7-1-83	7-6-83
6. Raj Kumar	7-1-83	7-6-83
7. Ashok Kumar	10-6-81	5-4-82.

There was pilferage of cement and other building material and many employees of the management including some of the claimants workmen were interrogated by the vigilance cell. There was no charge sheet or enquiry against any of the workmen. No notice or wages in lieu of notice or any retrenchment compensation was paid to any of the workman although all the workmen except Shri Pratap Singh and Shri Raj Kumar had complied more than 240 days of work during the 12 calendar months proceeding their last working day/termination. Shri Partap Singh had put in 80 working days and Raj Kumar had put in 136 days only. The N.I.T.C. project was completed in April/May 1986. The claimants/workmen made their first written representation to the Management in June/July 1985

2. The case of the workmen is that during the Conciliation proceedings the Management had taken up the plea that the workmen were involved in the pilferage of cement and other building material and the services of the suspected daily wage workers were discontinued without entering into the time consuming and complicated exercise of conducting departmental enquiries. Thus there was violation of the principles of natural justice. Before this Tribunal the stand taken by the Management is that the workmen had abandoned their services on their own for fear of being implicated in the pilferage of the Cement and the other building material. Thus the stand taken by the Management is contradictory. In any case, the termination of the services of the workmen/claimants is in violation of the provisions of section 25-F of the I.D. Act and hence is illegal and void. Consequently they have prayed for reinstatement with continuity of service and with full back wages.

3. The case of the Management is that the workman had abandoned their service on their own and their services were not terminated. The workmen kept silent for a long period and made first representation only in July, 1985. As the project has been completed in April, 1986 no reinstatement can be granted to the workmen and at best it is a case of nominal compensation. Out of the workmen, Shri Partap Singh and Shri Raj Kumar have not completed the requisite one year's continuous service and they are not entitled to any relief, even of compensation. The statement made in the conciliation by the officer representing the management was made under some misapprehension and mistaken belief of facts and it was made clear that it is not the case of the management that these workmen were involved in the theft of cement and other building material.

4. I have given my anxious consideration to all the facts and circumstances of this case. Both the parties are guilty of lapses. There appears to be something wrong in the functioning of the Management and there is need for setting its house in order. It should have given clear instructions to its representative who appeared before the conciliation about what was the defence of the Management to the demand raised by the workmen. The Management cannot be later on heard to say that whatever had been stated by its representative before the conciliation was under mistaken belief and under some misapprehension. Before the conciliation a clear stand was taken by the Management that all these workmen were suspected of being involved in the theft of cement and other building material and hence it was considered to discontinue their services without entering into the time consuming and complicated exercise of conducting

departmental enquiry in the case of daily wage workers. This was indeed a strange plea taken by the management before the conciliation. If there were allegations of misconduct the only course open to the management was to have charge sheeted these workmen and held an enquiry and given them opportunity of defence. As the management knowingly did not do so, it would be guilty of violating the principles of natural justice in the case of these workmen. The stand taken by the management before this Tribunal now that it is not its case, that the workmen were guilty of misconduct of being involved in theft of building material and that the workmen had voluntarily abandoned their services either out of fear or because they were not interested in continuing to work with the Management, is clearly at logger-heads, with its earlier stand before the conciliation. However, on a consideration of the circumstantial evidence available, the stand taken by the Management before this Tribunal appears to be correct and it appears that its representative had made the statement before the conciliation that these workmen were suspected of being involved in committing theft of building material and for that reason their services were terminated is factually wrong. In the first instance had the services of the workmen been terminated on the allegations of misconduct of theft it would have been done in one go on the same date. However, the last working days of these workmen range over a period of 16 months between April, 82 to August, 1983. This one fact goes to disprove the allegation that the services of these workmen were terminated for their alleged involvement in the theft of building material. Therefore, it clearly appears to be a case of retrenchment and in that event it was mandatory on the part of the management to have complied with the provisions of section 25F of the I. D. Act, in the case of those workmen who had completed one year's continuous service during the 12 calendar months prior to the last working day/their alleged termination. Out of the workmen, Shri Partap Singh and Raj Kumar have admittedly not completed one year's continuous service and, therefore, no notice was required to be served nor any wages in lieu of notice nor any retrenchment compensation was required to be paid to them. But in the case of the other 5 workmen/claimants the Management had to serve a notice on them or pay wages in lieu of notice in addition to retrenchment compensation. The normal consequence of non compliance with the provisions of section 25-F of the I.D. Act is reinstatement with continuity of service and full back wages. However, in the present case the workmen/claimants are also guilty of laches. They did not protest against their alleged termination till June/July, 1985 when for the first time they submitted a written representation. The workmen have not been able to give any cogent reasons for this inordinate delay in raising the dispute. Moreover, the N.I.T.C. project has since been completed in April, 1986 and, therefore, the question of reinstatement of these workmen does not arise, and they are only entitled to compensation.

5. In view of the discussion made above it is directed that S/Shri Ram Kumar, Nann Ram, Brij Pal Singh, Guru Dutt and Ashok Kumar may be given a lump sum compensation of Rs. 10000/- each in full and final settlement of all their claims. S/Shri Partap Singh and Raj Kumar are not entitled to any relief. This reference stands disposed of accordingly.

27th December, 1989.

G. S. KALRA, Presiding Officer.

[No. L-11011/4/87-D.II(B)/IR (Misc.)]

का. प्र. 465.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में केन्द्रीय सरकार कायम एण्ड नेचुरल गैस कमिशन, बड़ोदा के प्रबन्धन के सम्बन्ध में नियंत्रकों और उनके कर्मचारियों के बीच, अन्वय में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, अहमदाबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार के 25-1-1990 को प्राप्त हुआ था।

S.O. 465.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Oil and Natural Gas Commission, Baroda, and their workmen, which was received by the Central Government on 25-1-1990.

ANNEXURE

BEFORE SHRI G. S. BAROT, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL (CENTRAL) AT
AHMEDABAD

Reference (ITC) No. 14 of 1985

ADJUDICATION

BETWEEN

Oil and Natural Gas Commission, Baroda.

AND

The workmen employed under it.

In the matter of workmen's demand to treat workmen of the Canteen in Ankleshwar Project as employees of ONGC.

APPEARANCES :

Shri M. J. Sheth, Advocate—for the Commission.

Shri A. S. Kapoor, Vice President of ONGC Employees' Association—for the workmen.

AWARD

This industrial dispute between the management of Oil and Natural Gas Commission, Baroda and the workmen employed under it has been referred to me for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947, by the Government of India, Ministry of Labour and Rehabilitation's Order No. L-30011/1/83-D.III (B) dated 23rd July, 1984.

2. The dispute relates to a single demand which is as under :—

"Whether the demand of the workmen of the Canteen in Ankleshwar Project ONGC to treat them as employees of ONGC, is justified? If so, to what relief are the concerned workmen entitled and from what date?"

3. On behalf of the workmen concerned in this reference the statement of claim has been filed at Ex. 2. It has been contended herein that the Union which has filed the statement of claim is registered under the Trade Unions Act and also recognised as a representative union. The opponent is a Corporate body known as Oil and Natural Gas Commission (hereinafter referred to as 'the commission'); that the commission is carrying work of planning, promoting, organising developing petroleum resources and the production and sale of petroleum and petroleum products produced by it and to perform such other functions as the Central Government may from time to time assign to the said opponent; that petroleum and petroleum products are obtained by way of mining excavation in the oil fields with the help of deep drilling rig and to provide mechanical, electrical automobile services, the said opponents have set up, base factory at and in the town of Ankleshwar District Bharuch. It is covered by Mines Act 1952 and Mines Rules, 1955; that in compliance to provisions of Section 18 of Mines Act read with Chapter IX of the Mines Rules, 1966, the opponents, has a statutory obligation to provide within the precincts of the said base factory at Ankleshwar, a Canteen for use of all the persons employed by them; that the opponents appointed supervisory and other staff sufficient for proper working of the canteen as required by rule 68 of the said Mines Rules; that the

opponents through Manager of their Ankleshwar Project have appointed Canteen Managing Committee which is consulted as to the management and working of the canteen as per the Mines Rules; that the opponents have also provided building, furniture and equipments of requisite standard for the said statutory canteen and are fixing prices from time to time on non-profit basis to be charged for food, drink and other items served in the said canteen; that the canteen accounts are also maintained and audited as required; that the entire obligatory requirement of canteen facility is provided as per Rules, 65, 66, 70 and 71 of the said Mines Rules; that there are 12 members of the staff who are working from the last 15 years that the Union had made a demand through its letter dated 3-9-1981; that the staff of the said statutory canteen forms part of the general establishment of the opponents and hence they be treated on par with and be reckoned as employees of the ONGC for all practical purposes. This demand was not accepted which ultimately culminated into this reference.

4. On behalf of the Commission the written statement as been filed at Ex. 3-A wherein it was contended by way of preliminary objection that the present reference made as such is not maintainable. It was also pointed out that ONGC is a Body corporate set up under an Act of Parliament viz. Oil and Natural Gas Commission Act, 1959; that under Section 32 of the said Act the Commission with the prior approval of the Central Government and by Notification in the Official Gazette may make regulations consistent with the Act and Rules made therein for the purpose of discharging its functions under the said Act; that pursuant thereto it has framed regulations for regular employees of the Commission which defined their service conditions. These regulations contained R and P Regulations 1980 which inter-alia regulate the recruitment of persons and promotions thereof against vacancies for regular posts in ONGC; that these regulations have statutory force; that there are certain standing orders which govern the service conditions of contingent workmen who are classified as temporary and casual. Then temporary and casual workmen have been defined. It was then contended that it is not true that it has appointed supervisors and other staff in the canteen; that the staff of the canteen was appointed by the Canteen Managing Committee which is a welfare body and those employees were not appointed by ONGC directly or even indirectly. The management also nominate certain members of the Committee for the smooth functioning of the canteen; that as per the instructions of the Commission the building, furniture, equipments required for the said canteen are given on a nominal rent per month on the condition that the canteen will be run on 'No Profit No Loss' basis and they will provide food-stuffs, snacks, tea and soft drinks for the workmen; that during the conciliation proceedings it was made clear by the management that the canteen employees are not employees of ONGC but they are engaged by the Canteen Management Committee and, therefore, not entitled for any benefit whatsoever as per the Standing instructions of the Commission like any other employees. The demand of the canteen employees that they are actual employees of the Commission is denied as being not justified; that mere revision of dearness allowance of the canteen employees does not fulfill the criteria to be treated them as regular employees; that the canteen is run by the Canteen Managing Committee which is an independent and voluntarily formed body for welfare measures. It was hence submitted that the demand made as such deserves to be rejected.

5. On behalf of the union Ex. 5 has been produced. A statement has been filed giving details in respect of the workmen concerned viz. the period of employment. It shows that in all there are 11 employees and they are working right from 1968 and the last few from 1980, 1981 and 1984 onwards respectively.

6. Besides some documentary evidence the parties have led oral evidence also wherein on behalf of the union at Ex. 15 one Basantkumar Lachmandas has been examined. In his statement he has stated that he works with the Commission since 1961. He is well conversant with the activities done by the canteen which is run at Ankleshwar Project; that under the Mines Act the Commission is bound to provide and run the canteen; that Mines Rules are also applicable to it; that the Project Manager appoints Canteen Committee

according to the instructions received from the Headquarters and thereafter the Canteen Managing Committee engages the workmen to work in the canteen; that pay etc. are also decided by the Commission at its headquarters. Even the D.A. revision is also done at Headquarters; that the workmen working in the canteen are paid by the Canteen Managing Committee; that the internal auditor of the Commission audits accounts of the canteen; that Committee is doing a sort of supervisory work. In the cross-examination this witness has stated that the canteen staff is appointed by the canteen Managing Committee; that it has its separate constitution; that the said Canteen Committee is headed by the Chairman of the Project. The Deputy Director acts as an Executive Officer. While Financial and Accounts Officer is a Treasurer thereof; that the Labour Officer or Industrial Relations Officer acts as a welfare officer thereof and there are members from the Union; that the Commission gives building, furniture, utensils etc. for the use in the canteen and no rent is charged for the same; that no outsider is given appointment in this canteen. It is given only to ONGC employees; that the rates charged in the canteen are also decided by the Canteen Committee and if any misconduct is committed by the canteen employee, the Committee takes action against him. A Committee also maintains the list of the workmen engaged and it was wages and D.A. to them. That these canteen workmen are also given uniform and bonus for one month. The Headquarters also decides how many workers are required in the canteen and according to norms the Committee appoints them.

7. As against that the Commission has examined one Girishchandra Gupta at Ex. 19, who is the Deputy Director Finance and Accounts at Ankleshwar. In 1962 when he was at Ankleshwar the canteen was run by the contractor. The canteen at present is situated in the premises of the Commission and even today the canteen is run by the contractor. Before that it was the Canteen Committee who used to run it. In that Committee there was a Chairman, Vice Chairman, Chief Executive or Secretary and 3 to 4 members. The Chairman is the Project Manager and the others are all employees of the Commission. The Commission also pays subsidy to the canteen and 50% of the wages of the canteen employees are also given by way of subsidy. The selection and appointment of the canteen employees is also done by the Canteen Committee. It is the Committee which supervises and controls the employees in the canteen. For the recruitment purpose for employees in the ONGC (i.e. the commission) firstly an advertisement is given, names are also called from employment exchange, they are scrutinised and only eligible persons are called for interview. After the interview selection is made and those who are selected have to undergo medical check up and then they are appointed. They are also required to give certain declaration but such formalities are not to be performed by the canteen employees. He has further stated that if the canteen employees commit misconduct, it is not the Commission but it is the Canteen Committee which takes action against him. In case of any complaint received it is also the Committee which decides that complaint. The Commission does not charge rent for the premises so for the electric charges or the water charges. The Commission also gives interest free loan. Lastly, he has stated that the employee of the canteen is not an employee of the canteen is not an employee of the Commission. The witness in his cross-examination has admitted that the Commission is covered under the Mines Act and also the Rules. He also stated that under the said Act and the Rules where there are more than 250 employees canteen is normally provided but he does not know whether it is obligatory or not. He then stated that it is not true that after the selection of a canteen employee by the Committee it has to be approved by the Commission. When he was shown such an order dated 29-5-1978 wherein in para 2 such a statement is made, he has stated that it is wrong. Ex. 22 is the letter referred to above dated 29-6-1978. From the said letter it appears that the Natavar Bijar was appointed as Bearer in the canteen as per the decision of the Canteen Managing Committee and the same was approved by the Project Manager.

8. I have considered the arguments of both the sides. On the one hand it is contended by Shri Kapoor on behalf of the employees that considering the evidence oral as well as documentary it is quite clear that the employees of the

canteen should be put at par and be treated as employees of the Commission. While the contention of the Commission is that even though the canteen is run by giving subsidies by the Commission it is only the Committee which is concerned with the affairs of the canteen and the Commission has nothing to do with it and, therefore, canteen employees are not the employees of the Commission. On close scrutiny of the evidence recorded by them oral as well as documentary it appears that virtually it is the Commission who is fully concerned with the affairs of the canteen. Under the Mines Act and the Regulations made thereunder it is obligatory on the part of the Commission to maintain and run the canteen for the workmen who are working in the Commission. If we consider the constitution of the Committee it is quite from the evidence that Project Manager is the Chairman. Then the Vice Chairman and the other officers are also from the Commission itself. The other members on the Committee are also the employees of the Commission. It is run by the Commission for the welfare and benefits of its workmen. Even the premises, furniture, utensils are also provided free by the Commission. The wages D. A. etc. of the employees of the canteen are also fixed by the Headquarter and paid of course by the committee but they are fixed by the Commission. Even the water and electric charges are also borne by the Commission. Thus it is absolutely clear that the canteen has to be run by the Commission by way of welfare activities and for benefits of its workmen. Thus it is obligatory on the part of the Commission and hence it cannot be said that the Commission has nothing to do with the canteen. It has also come on record that the employees which are given appointments are also approved by the Commission. Of course, it has been denied by the witness of the Commission but the letter produced on record shows otherwise. In my opinion the criteria which is important to decide such question is the ultimate control and considering the evidence herein, it appears clearly that it is the Commission which controls the canteen.

9 As far as the question as to whether canteen employees are employees of the ultimate employer or not has come for consideration at various length including the Hon'ble Supreme Court and by now it is well settled law that when it is obligatory on the part of the employer to run such canteens than the employees of the canteen have been treated as employees of the main employer. This question has been decided by the Hon'ble Supreme Court in Civil Appeal No. 1557 of 1968 in the case of *Suraspur Mills Co. and the Hon'ble Supreme Court* was pleased to hold, "Since, under the Factories Act it was the duty of the appellant to run and maintain the canteen for the use of its employees it appears to us that the ratio of decision in the *Ahmedabad Manufacturing and Calico Printing Co. Ltd.* would be fully applicable in which it was held that the gardener working at the Managing Agents place is also an employee of the Mill. The other decision in this behalf is also of the Hon'ble Supreme Court in Special Leave Petition No 1833 of 1978 wherein some of the tests have been laid down about relationship of employer-employee and it was held by the Hon'ble Supreme Court that where worker or a group of workers labours produces goods or services and these goods or services are for the business of another thing other is, in fact, the employer." In fact, in order to do the real justice in such case one has to lift the veil and find out as to what are correct facts. In the instant case if the veil is lifted, it becomes very clear that the Commission is required under the Act and the Rules to maintain and run the canteen for the welfare of the employees who take benefits in the canteen and, therefore, as per the above decision of the Hon'ble Supreme Court it is for the business of that other who herein is the Commission. As against that Shri Sheth drew my attention to the decision of the High Court of Kerala in the case of *Comino Binani Zinc, Ltd. Vs. Pappachan* reported in 1989 I LLM 474. It has been held that in the canteen run by independent contractors the employees working in the said canteen are not entitled to claim bonus or gratuity. This is a case where his Lordships was pleased to hold that even in a case where the canteen is run by the contractor, the management of the factory like the petitioner cannot absolve themselves from the liability to pay the wages to the workers engaged in the canteen. But wages due to the workmen did not include bonus or gratuity. In my view this decision relied

upon by Shri Sheth does not help him at all. As against that there are two decisions of the Hon'ble Supreme Court which clearly state that the employees of the canteen are, in fact, employees of the principal employer. In the instant case the employees of the canteen run at the Ankleshwar Project by the Commission are, therefore, employees of the Commission and they are entitled to receive all the benefits which are payable to the employees of the Commission.

10. For the reasons stated above, it is hereby declared that the employees of the canteen herein are employees of the opponent. The opponents are further directed to give all the benefits and amenities including pay etc. to the employees working in the canteen at par with appointment's other employees in the Ankleshwar Project. As regards retrospective effect, I do not think that a long retrospective effect should be given. In my view ends of justice would be met if effect is given from 1-1-1990 order accordingly.

11. Opponents are also directed to pay Rs. 300 (Rupees three hundred) by way of costs.

Ahmedabad,

Dated, 30th December, 1989.

G. S. BAROT, Presiding Officer

[No. L-30011/1/83-D.III (B)]

S. VENUGOPALAN, Desk Officer

नई दिल्ली, 29 जनवरी, 1990

का. धा. 466—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार बैंक अफ महाराष्ट्र के प्रबन्धकों के संबंध निरीक्षकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, सं. 2, बंबई के पंचाट का प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 29th January, 1990

S.O. 466.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Maharashtra and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Reference No. CGIT-2/53 of 1986

PARTIES :

Employers in relation to the management of Bank of Maharashtra.

AND

Their workmen.

APPEARANCES :

For the employers—Shri Nijampurkar R. M. Officer.

For the workmen—Shri Khandekar V. Y. Dy. General Secretary, Bank of Maharashtra Employees Association, Nagpur.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, the 1st September, 1989

AWARD

The Central Government by their Order No. L-12012/17/86-D.II (A) dated 16-12-1986 have referred the following

industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act:—

“Whether the action of the management of Bank of Maharashtra in not placing the name of Shri D. V. Pachkawade, Clerk for his request transfer on compassionate grounds from Pimplod to Amravati before the Machinery Meeting is unjustified and in violation of clause 7(iii) of Bipartite Settlement dated 31-10-83? If so, to what relief the workmen namely S/Shri J. M. Gawai, A. V. Parte, D. C. Saitkar and C. C. Advani are entitled?”

2. The dispute in the present case has been raised, not by any particular workman, but by the Bank of Maharashtra Employees Association, Nagpur. The case of that Association, as disclosed from the statement of claim filed by its Deputy General Secretary (Ex. 2) in short, is thus:—

The workman Shri D. V. Pachkawade was appointed in the Bank as a Clerk in April 1982. The above said Union is affiliated to All India Bank Employees Association, which has entered into an agreement regarding transfer of employees in the Bank, on 31-10-1983. As per clause 2 of this agreement any workman can avail of maximum two request transfers in his whole service period. Further there will be a gap of five years between the two transfers. As per Clause 7(iii) of that agreement, the management can consider the transfers on Compassionate ground and that the list of proposed transfers on Compassionate ground is to be placed before the Machinery Meeting of the Bank. Shri D. V. Pachkawade, who was appointed at Allappalli Branch in April 1982, had applied for his transfer to Pimplod. The management of the Bank showing him favour, transferred him in December 1982 to Pimplod in branch of the said agreement. As per the terms of agreement, an employee can apply for transfer after two years from the date of taking charge in the Bank as a probationer. Shri Pachkawade was transferred from one place to another in breach of the said provisions of the agreement. After his first transfer, Shri Pachkawade was not eligible for the second transfer for five years more and his second request transfer was not tenable for five years more. Further, the Bank management cannot consider the second transfer-request and transfer him to Amravati branch in July 1985 in breach of the agreement of October 1983. The reason for transfer is that Shri Pachkawade was not a member of the Union in question, but was a member of the rival Union. Shri Pachkawade had applied for his request transfer, but the request of other four employees for transfer was not considered by the Bank management. It is not true that the case of Shri Pachkawade for transfer was considered on Compassionate ground, as his case for transfer was not placed before the Machinery Meeting and was not discussed there. The above said transfer of Shri Pachkawade was not on administrative ground, and as such, it was subject to the agreement of October 1983. The Union, therefore, prayed that the management be directed to cancel the transfer of Shri Pachkawade and he be posted to Allappalli Branch, and not to commit any breach in contravention of the said agreement.

3. The Bank management by their written statement (Ex. 3) contested the said claim of the Union, and in substance contended thus:—

The period of two years for effecting the first transfer is not applicable in respect of newly opened branches. The Branch at Pimplod was opened in 1982, and Shri Pachkawade had applied for his posting at that Branch. The transfer of Shri Pachkawade from Allappalli to Pimplod is not in breach of the provisions of the agreement in question. Shri Pachkawade had requested his transfer on compassionate ground, and in such cases the Bank has got

discretion to transfer an employee or otherwise. The committee of Executives has considered the genuineness of the reasons put forth by Shri Pachkawade, and thereafter he was transferred from one place to another. The point was also discussed with the office-bearers of the Union raising the dispute in question and also in the Machinery Meeting of the Bank, even though the discussions were not placed on record. The Bank management therefore prayed that its action in respect of transfer of Shri Pachkawade be held proper, and the claim of the Union be rejected.

4. On these pleadings, the necessary Issues were framed at Ex. 4.

5. While the case was at the stage of hearing, the Dy. General Secretary of the said Union placed on record an application stating that the matter was again discussed with the management, and that the Union does not wish to pursue the matter, and they may be allowed to withdraw the dispute. It was stated on behalf of the management that Shri Pachkawade, whose transfer was challenged, is already transferred to some other place, and that most of the other employees whose cases were not considered at that time, have also been transferred on request, and that the Bank management has no objection in withdrawal of the dispute by the Union.

6. Therefore, as the whole dispute is settled out of Court in the interests of both the parties, the present reference stands disposed of. Award accordingly.

The parties to bear their own costs of this Reference.
Dated: 1-9-1989.

P. D. APSHANKAR, Presiding Officer
[No. L-12012/17/86-D.II(A)]

का.घा. 467 : औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्डियन बैंक के प्रबंध-संघ के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिग्रहण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 467.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the Indian Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU,
MADRAS-104

Wednesday, the 15th day of November, 1989

Industrial Dispute No. 64 of 1988

[In the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of Indian Bank, Madras]

Between the workman :
Shri G. Karunanidhi,
S/o R. Ganapathy,
No. 55, Mandavanam Street,
Kurinipadi-607302,
South Arcot Distt.,
Tamil Nadu.

AND

The Assistant General Manager (PL),
Admn. Award Staff,
Indian Bank,
No. 31, Rajaji Salai,
Madras-600001.

REFERENCE :

Order No. 12012/263/88-D.II(A), dated 13th September, 1988 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru S. Vaidyanathan for Tvl. Row & Reddy, Miss R. Vaigai and S. Vaidyanathan, Advocates appearing for the workman and of Thiru R. Arumugam for Tvl. Aiyer & Dolia and R. Arumugam, Advocates appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This dispute between the workman and the Management of Indian Bank, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India, in its Order No. 12012/263/88-D.II(A) dated 13th September, 1988 of the Ministry of Labour for adjudication of the following issues :

"Whether the action of the management of Indian Bank in terminating the services of Sri G. Karunanidhi and not considering him for further employment while recruiting fresh hands under Section 25-H of the I.D. Act is justified? If not, to what relief is the workman entitled?"

2. The claim petition averments are that the Respondent is the Nationalised Bank wherein the Petitioner applies for appointment as a temporary sub-staff and his letter was appointment as a temporary sub-staff and his letter was appointed by the Branch Manager, Kurinjipadi on 20th June, 1981. The Employment Registration card wherein it was registered was handed over to the Branch Manager the day itself. In anticipation of the permission from the Regional Office, the Petitioner was employed by the Kurinjipadi Branch on 20th June, 1981 as a temporary sub-staff. The Regional Manager by his letter dated 3rd July, 1981 permitted the Branch Office to engage the Petitioner as temporary peon. He had worked in the Branch for nearly 1-1/2 years. If Sundays and holidays are included, he had completed well over 120 days. While so the Circular dated 20th August, 1981 was issued by the Respondent-Management with respect to the engagement of sub-staff, under which, if the candidates engaged presently do not have the requisite 'live employment Registration Certificate' they should procure and produce the same within two months time from the date of signing this minutes otherwise they will be discontinued notwithstanding the number of days they had earlier been engaged. At the time of signing this minutes the Petitioner himself had registered with the District Employment Exchange. While so on the advice of the Regional Manager, Villupuram, the Branch Manager terminated the services of the Petitioner as he has not been sponsored on the basis of the direction by the Central Government not to engage temporary sub staff unless they were sponsored by the Local Employment Exchange. The Circular dated 1-4-81 was very much there when the Petitioner was engaged as a sub-staff. In spite of this Circular the Petitioner continued for nearly 1/2 years. Therefore the Respondent estopped the very termination of the Petitioner on that ground. The Petitioner was not given employment since not being included in the panel of temporary sub-staff for permanent absorption. Hence he raised a dispute. The Supreme Court has held that as far as the independent statutory authorities are concerned the Government cannot enforce the direction as it has not got the authority of law. Hence the Petitioner's termination on that ground that he had not been sponsored by the employment exchange is untenable. The contention that the Petitioner has not completed 120 days to be retained in the Panel for temporary sub-staff to be absorbed later is untenable, since if the Sundays and holidays are included the Petitioner had completed more than 120 days. After the Petitioner has been terminated, several persons are recruited fresh. The action of the Management is contrary to Section 25-G and H of the I.D. Act. The Respondent-Bank is the nationalised Bank and not Government Departments.

The directive issued by the Government of India is only administrative in character and it cannot over ride the provisions of Section 25-G and H of the I.D. Act. Hence the Petitioner is to be reinstated in service with all benefits.

3. The Respondent in its counter states that the reference is not warranted since it is not a case of termination of service of a permanent workman. The Petitioner was engaged in leave vacancies of sub-staff members for the period of 72 days and was discharged for the reason of non-sponsorship of the Employment-exchange. Hence the question of termination and reinstatement under Section 25-H never arises. The Petitioner was empanelled for being engaged in the leave vacancy as sub-staff at Kurinjipadi Branch. The directive of the Government in its letter dated 30-9-1978 is in all public sector banks, it is obligatory on the part of the establishment that all vacancies arising in Central Government Offices/establishments irrespective of the nature and duration of the vacancy are not only to be notified but also to be filled through Employment Exchange alone and other permissible sources can be tapped only if employment exchange concerned will issue a non-availability certificate. When such temporary sub-staff were disengaged from the panel, on the basis of the directive, it was agreed after having discussion with the recognised union to call for the list of all persons who were initially engaged after 1-4-81 without being sponsored by the Employment Exchange and worked for 120 days as on 31-12-84 from the respective Zonal Offices and draw a final list for retention and continue them in the panel of temporary sub-staff as on 31-12-84. The Petitioner in this case who was initially engaged on 20-6-81 had worked for 72 days only. He was not sponsored by the Employment Exchange. Hence he was not eligible for retention in the panel. The Petitioner's contention that he worked for nearly 1-1/2 years and if Sundays and holidays were included he completed well over 120 days, is untenable. The decision of Supreme Court cited by the Petitioner is not relevant to the fact of this present case. The Petitioner was not engaged continuously and had not been paid on Sundays and other holidays during the said period of 1-1/2 years. The Petitioner was engaged in the leave vacancy of sub-staff after 1-4-81 without being sponsored by the Employment Exchange. The Union has not sponsored the particular dispute as the bank and the Federation have already agreed that only those persons who were engaged for 120 days as on 31-12-84 should be engaged even if they are not sponsored by the Employment Exchange. The Petitioner was engaged only for 72 days. The Petitioner was disengaged not for the reason of surplus labour but for non sponsorship of the Employment Exchange. The contention that the Bank is estopped from terminating the service is not tenable. The contention that as far as independent statutory authorities are concerned, the Government cannot enforce the directive regarding compulsory notification on sponsorship is not tenable. Hence the claim is liable to be rejected.

4. The points for determination are (1) Whether the action of the Management in terminating the services of the Petitioner is justified? (2) To what relief?

5. Exs. W-1 to W-12 were marked on the side of the Petitioner. Exs. M-1 to M-3 were marked on the side of the Management. No oral evidence was adduced on either side.

6. POINT (1) : It is the admitted case of the parties that the Petitioner herein has been appointed temporarily, taking the Employment Exchange Card produced by the Petitioner as a sub-staff by the Branch of the Kurinjipadi Branch in anticipation of the permission of the Regional Manager. It is also not in dispute that the Regional Manager also permitted the Branch to engage the Petitioner as a temporary peon. It is also conceded that the Petitioner has worked only for 72 days whereas according to the Petitioner he worked nearly 1-1/2 years. The controversy now arises in this case due to termination of the Petitioner suddenly by the Respondent-Bank under Ex. W-2, order dated 15-10-82. The reason given therein is since the Government instructed the Head Offices that the vacancies in sub-staff cadre should

be filled from among the candidates, whose names have been sponsored by the Employment Exchange and since the Petitioner having been engaged after 1-4-81 and his name not having been sponsored by the Employment Exchange, his services were dispensed with. At this stage, it is the case of the Respondent in view of the direction contained under Ex. M-1 the Petitioner was disengaged. Ex. M-1 is the Xerox copy of the letter dated 30-9-78 issued by the Department of Economic Affairs (Banking Divisional) to all the Banks including Financial Institutions that it is obligatory on the part of the public sector establishment that all vacancies arising out of Central Government Offices or Establishments including statutory organisation irrespective of the nature and duration of the vacancy are not only to be notified but also to be filled through the Employment Exchange alone and other permissible sources can be tapped only if Employment Exchange concerned issued a non-availability certificate. In continuation of Ex. M-1 another letter Ex. M-2 dated 23-12-81 was sent to the Chairman and Managing Director of the Respondent-Bank bringing its notice that in respect of Ex. M-1 that some Banks have started following the instructions only after a lapse of two years or so and even some banks are making recruitment without the medium of employment exchange, which is improper and therefore instructions issued under Ex. M-1 should be followed by the Banks without exception and any appointment or absorption of persons in the subordinate cadre without referring the vacancies to the Employment Exchange must be terminated. Strong reliance is placed on these two documents on the side of the Respondent to show that the instructions of the Central Government are binding on them and they have to discharge the temporary sub-staff. It is further contended that subsequent to the instructions under Ex. M-1 and M-2, representations were made by the Union about the hardship caused. Hence minutes of discussion were held and finally they were drafted by the Management and the Employees Union. Ex. M-3 is the said Minutes of discussion where it was agreed to call for the list of all persons who were engaged without being sponsored by Employment Exchange and worked for 120 days as on 31-12-84 from the respective Zonal Offices and draw a final list. They also agreed to include even those who were engaged after 1-4-81 provided they have completed 120 days as on 31-12-84 in the panel. This document according to the Respondent is clinching on their side since Ex. M-3 took place only after a detailed discussion with the Union. In other words, it is the plea of the Respondent that the Employees Union who espouses the cause of the workmen cannot get over the same. It is clear from Ex. M-3 that the employees who were completed 120 days from 1-4-81 to 31-12-84 will be included in the panel. However, it cannot take away any right vested on the Petitioner under the Provisions of the Industrial Disputes Act. Ex. M-3 not being a settlement and only a minutes of discussion, it cannot be said to be binding on the Petitioner. There is nothing on record to show that by reason of minutes of discussion a settlement was arrived at subsequently. It is significant to note at this stage that representations were made by the Petitioner for reinstating him and were rejected under Ex. W-3, W-4 and W-5 for the same that his name was not sponsored by the Employment Exchange. At this stage the learned counsel for the Petitioner would draw my attention to a decision reported in 1987—*I—L.L.J.* page 545 at 551 (Union of India and others vs. Harigopal and others). In that case, the question arose before the Supreme Court was that whether an establishment in the public sector or an establishment in the private sector as defined in the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 may make appointments to posts, to which Act applies to all persons not sponsored by the Employment Exchanges. A further question also arose namely, whether the Act covers Government Establishments also. The Division Bench of Andhra Pradesh High Court held that the Act has no application to Government establishments, that the Act casts no obligation either on the public sector establishment or on the private sector establishment to make the appointments from among candidates sponsored by the Employment Exchanges only and that any insistence that candidates sponsored by the Employment Exchanges alone should be appointed would be contrary to the right guaranteed by Articles 14 and 16 of the Constitution. In the appeal before the Supreme Court, 366 GI/90—3.

the judgement of the High Court regarding that Act is not applicable to Government Establishments was set aside. The Supreme Court further held that there is no provision in the Act which obliges an employer to make appointment through the agency of the employment exchange. On the other hand, Section 4(4) of the Act makes it explicitly clear that the employer is under no obligation to recruit any persons through employment exchanges to fill in the vacancy merely because the vacancy has been notified under Section 4(1) or Section 4(2) of the Act. The main object in the Act is that an obligation is placed on the employer to notify the vacancies that may arise in their establishment before filling these vacancies the object of the Act is not to restrict the field of choice in any particular manner but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have claim for appointment considered without the worker having to knock at every door for employment. The Supreme Court further reiterated that the Act does not oblige any employer to employ those persons only who have been sponsored by the employment exchanges. The Supreme Court further held that the Government is at perfect liberty to issue instructions to its own departments and organisations provided the instructions cannot bind other bodies which are created by statute and which function under the authority of statute. In the absence of any statutory prescription the statutory authority may however adopt and follow such instructions if it thinks fit. It is thus seen as rightly contended by the learned counsel for the Petitioner that the above decision has clearly held that these instructions, namely, Exs. M-1 and M-2 do not bind them since the Respondent-Bank is created by the statute. On the other hand, the learned counsel for the Respondent-Management pointed out from the same decision, that in the absence of any statutory prescription, the statutory authority can adopt and follow such instructions as it may think fit. It may be true, but the Supreme Court has categorically laid down that any direction by the Government in the matter of appointments to the statutory bodies and those instructions are not binding.

7. It is relevant to note that and is also not dispute that as per Bipartite Settlement Para 20.12 preference should be given to the employees who had already worked. In this connection, Section 25-H of the Industrial Disputes Act, 1947 has also been relied on by the Petitioner. It says,

"Where any workmen are retrenched, and the employer proposed to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons.

But the learned counsel for the Respondent would straightaway contend that Section 25-H cannot be invoked for the reason that the Petitioner was not retrenched and consequently no preference can be claimed by the Petitioner. The Respondent instead of retrenching or terminating the Petitioner has ingeniously taken a plea that he has been disengaged since he being a temporary sub-staff working in leave vacancies. It only appears to get over the difficulties and the rights which the Petitioner may claim later on, it has been thought off to state that he has been disengaged which would in effect amount to termination or removal from service of the Petitioner.

8. It is urged by the learned counsel for the Respondent the Petitioner since had not completed 120 days as on 31-12-84, he cannot be considered for empanelling in the list as per Ex. M-3 minutes of discussion. But according to the Petitioner Ex. W-11 Statement showing the number of days worked by the petitioner comes to 72 days. The Respondent does not dispute the actual days worked by him. However the Petitioner would urge that inclusive of holidays and Sundays, he would have completed 120 days. At this stage that he having been engaged in spite of Government Circular under Ex. M-1 as far as 1978, it is not open to the Respondent-Management to terminate his service over night on the ground that his application was not

sponsored by the Employment Exchange. In other words, the plea of the Petitioner is that the Respondent is hit by the principle of estoppel. Reliance is placed in A.I.R. 1976- (Supreme Court) Page 376 at 381 (Shri Krishna vs. The Kurukshetra University, Kurukshetra) para 7, wherein it has been held that the University authorities having acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidates of the appellant. Similarly, reliance was also placed in an unreported decision W.P. No. 6733/82 held by the Hon'ble Justice Kamanujam that it is not open to the authorities to terminate the services on the ground that he is not qualified as per rules after having allowed the candidate to take the examination and also having appointed him. The learned counsel for the Respondent contended that the principle of promissory estoppel cannot be invoked against the Bank since the Petitioner has no right to claim employment automatically. Therefore, as rightly pointed out it is a case where no fault on the Petitioner he has been disengaged on the basis of some instructions issued under Ex. M-1. It has already been seen that instructions contained in Ex. M-1 are not binding on the Bank as per decision of the Supreme Court reported in 1987—I—L.L.J. page 545 at 551 (Union of India and others vs. N. Hargopal and others). Above all, the Respondent cannot get over the principle of estoppel also.

9. The learned counsel for the Respondent raised a contention that the very reference itself is bad since there was no question of termination of the Petitioner as he was only disengaged for a particular date. It is also urged that the reference should have been only regarding whether disengagement of the Petitioner from 15-10-82 is justified. I am unable to agree with this contention since for all purposes the Petitioner has been removed from service whatever manner it may be called whether disengagement, termination or removal. As observed elsewhere it is only an ingenuous plea raised by the Bank for having terminated the services of the Petitioner. It is also relevant to note that the Respondent had not taken into consideration while disengaging the services of the Petitioner, the provisions of Section 25-H of the Industrial Disputes Act which is mandatory. According to this Section, retrenched persons should have been offered re-employment giving preference to other persons. It is not the case of the Respondent that subsequent to the Petitioner's disengagement, no other persons were appointed. For all these reasons, this point is found in favour of the Petitioner-workman.

10. POINT(2): Hence an award is passed directing the Respondent-Bank to reinstate the Petitioner without back-wages and attendant benefits within one month from the date of publication of the award. There will be no order as to costs.

Dated, this the 15th day of November, 1989.

K. NATARAJAN, Industrial Tribunal
[No. L-12012/263/88-D.II(A)]

WITNESSES EXAMINED

For Both sides: None.

DOCUMENTS MARKED

For workman:

Ex. W-1/20-8-81 — Circular No. 116/81 issued by the Management-Bank to all Branches and offices at Central Office (xerox copy)

Ex. W-2/15-10-82 — Termination order issued to Thiru G. Karunanidhi (Xerox copy)

W-3/29-3-83 — Letter from Management-Bank to Thiru G. Karunanidhi (Xerox copy)

W-4/2-3-87 — Letter from Regional Manager, Cuddalore Branch of the Bank to Thiru G. Karunanidhi (Xerox copy)

W-5/13-5-87 — Letter from the Manager, Indian Bank, Kuringipadi to Thiru G. Karunanidhi (xerox copy)

W-6/29-6-87 — Letter from Thiru G. Karunanidhi to the Assistant Labour Commissioner (Central) Madras (Xerox copy)

W-7/14-1-88 — Letter from Management-Bank to the Assistant Labour Commissioner (Central), Madras (Xerox copy)

W-8/23-2-88 — Letter from Thiru G. Karunanidhi to the Assistant Labour Commissioner (Central) Madras (xerox copy)

W-9/17-3-88 — Minutes of Conciliation Proceedings (Xerox copy)

W-10/5/7-4-88 — Conciliation Failure Report (Xerox copy)

W-11/ — Statement showing number of days worked by Thiru G. Karunanidhi in the Management Bank, Kuringipadi Branch from 20-6-81 to 6-10-82 (Xerox copy)

W-12/ — BIO-DATA of Thiru G. Karunanidhi (Xerox copy)

For Management:

Ex. M-1/30-9-78 — Circular issued by the Central Government (Xerox copy)

M-2/23-12-81 — D.O. Letter from Director, Ministry of Finance, Department of Economic Affairs, Government of India, to the Chairman and Managing Director, Indian Bank, Madras (Xerox copy)

M-3/25-11-85 — Minutes of discussions held between the Management of Indian Bank and the Federation of Indian Bank Employees Unions (Xerox copy)

K. NATARAJAN, Industrial Tribunal.

का. प्रा. 468.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अधुन में, केन्द्रीय सरकार इच्छित बैंक के प्रबंधन के संबंध निशेधकों और उनके कामदारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिपत्य, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 468.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial dispute between the employers in relation to the Indian Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU
MADRAS-104

Wednesday, the 15th day of November, 1989

Industrial Dispute No. 57 of 1988

(In the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of Indian Bank, Madras).

Between the workman

Shri R. Dakshinamurthy,
S/o Shri Ramalingam,
No. 5, Perumathuram Street,
Kuringipadi,
South Arcot,
Tamilnadu-607302.

AND

The General Manager,
Indian Bank,
31, Rajaji Salai,
Madras-600002.

REFERENCE :

Order No. L-12012/265/88-D.II(A) dt. 19-8-1988 of Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru S. Vaidyanathan for Tvl. Row & Reddy and S. Vaidyanathan appearing for the workman and of Thiru R. Arumugam for Tvl. Aiyar & Dolia and R. Arumugam appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This dispute between the workman and the Management of Indian Bank, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. 12012/265/88-D.II(A), dated 19-8-1988 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the Management of Indian Bank is terminating the services of Shri R. Dakshinamurthy is justified? If not, to what relief is the workman entitled?"

2. The claim Petition averments are that the Petitioner applied for appointment as temporary sub staff by letter dated 19-12-81 to the Branch Manager, Indian Bank, Kurinchipadi. His letter was forwarded to the Regional Manager, Villupuram. He was subsequently appointed by the Branch Manager Kurinchipadi on 5-6-1981. In anticipation of the permission from the Regional Office he was employed by the Kurinchipadi Branch. He had worked for 1-1/2 years during which period he actually worked for 109 days. If Sundays and holidays are also include, he would have completed well over 120 days. While so on the basis of circular dated 20-8-81 issued by the Respondent-Management the Petitioner was terminated from service on 16-10-82 as he has not been sponsored by the Employment Exchange. The Circular states if the candidates engaged presently do not have the requisite 'live employment registration certificate' they should procure and produce the same within two months time from the date of signing the minutes. They would be discontinued notwithstanding the number of days they had earlier been engaged. The petitioner was appointed even on the directive of the Central Government not to engage temporary sub-staff, unless they were sponsored by the Local Employment Exchange after 1-4-81. In spite of the Circular, he completed for nearly 1-1/2 years. Therefore the Respondent are estopped from terminating the Petitioner's service on that ground. The Petitioner after termination was not given any appointment in spite of representations. Hence he raised a dispute. The contention of the Management that the Petitioner has not completed 120 days to be retained in the panel for temporary sub-staff to be absorbed permanently is again untenable since if Sundays and holidays are included, the Petitioner would have completed more than 120 days. Hence it is prayed that the termination of the Petitioner is not justified and benefits.

3. The Respondent in its counter states that the reference is not warranted since it is not a case of termination of service of a permanent workman. The Petitioner was engaged in leave vacancies of sub-staff members for the period of 109 days and was discharged for the reason of non-sponsorship by the Employment Exchange. Hence the question of termination and reinstatement under Section 25-H never arises. The Petitioner was empanelled for being engaged in the leave vacancy as sub-staff at Kurinchipadi Branch. The direction of the Government in its letter dated 30-9-1978 in all public Sector banks, it is obligatory on the part of the establishments that all vacancies arising in Central Government offices/establishments irrespective of the nature and duration of the vacancy are not only to be notified but also to be filled through Employment Exchange alone and other permissible sources can be tapped only if employment exchange concerned will issue a non-availability certificate. When such temporary sub-staff were disengaged

from the panel, on the basis of the directive, it was agreed after having discussion with the recognised union to call for the list of all persons who were initially after 1-4-81 without being sponsored by the Employment Exchange and worked for 120 days on 31-12-84 from the respective Zonal Offices and draw a final list for retention and continue them in the panel of temporary sub-staff as on 31-12-84, the Petitioner in this case who was initially engaged on 20-6-81 had worked for 109 days only. He was not sponsored by the Employment Exchange. Hence he was not eligible for retention in the panel. The Petitioner's contention that he worked for nearly 1-1/2 years and if Sundays and holidays were included he completed well over 120 days, is untenable. The decision of Supreme Court cited by the Petitioner is not relevant to the fact of this present case. The Petitioner was not engaged continuously and had not been paid on Sundays and other holidays during the said period of 1-1/2 years. The Petitioner was engaged in the leave vacancy of sub-staff after 1-4-81 without being sponsored by the Employment Exchange. The Union has not sponsored the particular dispute as the bank and the Federation have already agreed that only those persons who were engaged for 120 days as on 31-12-84 would be engaged even if they are not sponsored by the Employment Exchange. The Petitioner was engaged only for 109 days. The Petitioner was disengaged not for the reason of surplus labour but for not sponsorship of the Employment Exchange. The contention that the Bank is estopped from terminating the service is not tenable. The contention that as far as independent statutory authorities are concerned, the Government cannot enforce the directive regarding compulsory notification on sponsorship is not tenable. Hence the claim is liable to be rejected.

4. The points for determination are : (1) Whether the action of the Management in terminating the services of the Petitioner is justified ? (2) To what relief ?

5. Exs. W-1 to W-12 and Exs. M-1 to M-3 were marked on the side of the Petitioner and Management-Respondent respectively. No oral evidence was adduced on either side.

6. Point (1).—It is the admitted case of the parties that the Petitioner herein has been appointed temporary, taking the Employment Exchange Card produced by the Petitioner, as a sub-staff by the Branch of the Kurinchipadi Branch in anticipation of the permission of the Regional Manager. It is also not in dispute that the Regional Manager also permitted the Branch to engage the Petitioner as a temporary peon. It is also conceded that the petitioner has worked only for 109 days whereas according to the Petitioner he worked nearly 1-1/2 years. The controversy now arises in this case due to termination of the Petitioner suddenly by the Respondent-Bank under Ex. W-1 Order dated 16-10-82. The reason given therein is since the Government instructed the Head Offices that the vacancies in sub-staff cadre should be filled from among the candidates, whose names have been sponsored by the Employment Exchange and since the Petitioner having been engaged after 1-4-81 and his name not having been sponsored by the Employment Exchange, his services were dispensed with. At this stage, it is the case of the Respondent in view of the direction contained under Ex. M-1 the Petitioner had to be disengaged. Ex. M-1 is the xerox copy of the letter dated 30-9-78 issued by the Department of Economic Affairs (Banking Division) to all the Banks including Financial Institutions that it is obligatory on the part of the public sector establishments that all vacancies arising out of Central Government Offices or Establishments including statutory organisations irrespective of the nature and duration of the vacancy are not only to be notified but also to be filled through the Employment Exchange alone and other permissible sources can be tapped only if Employment Exchange concerned issued a non-availability certificate. In continuation of Ex. M-1 another letter Ex. M-2 dated 23-12-81 was set to the Chairman and Managing Director of the Respondent-Bank bringing its notice that in respect of Ex. M-1 that some banks have started following the instructions only after a lapse of two years or so and even some banks are making recruitment without the medium of employment exchange, which is improper and

therefore instructions issued under Ex. M-1 should be followed by the Bank without exception and any appointment or absorption of persons in the subordinate cadre without referring the vacancies to the Employment Exchange must be terminated. Strong reliance is placed on these two documents on the side of the Respondent to show that the instructions of the Central Government are binding on them and they have to discharge the temporary sub-staff. It is further contended that subsequent to the instructions under Ex. M-1 and M-2, representations were made by the Union about the hardship caused. Hence minutes of discussion were held and finally they were drafted by the Management and the Employers Union. Ex. M-3 is the said Minutes of discussion where it was agreed to call for the list of all persons who were engaged without being sponsored by Employment Exchange and worked for 120 days as on 31-12-84 from the respective Zonal Offices and draw a final list. They also agreed to include even those who were engaged after 1-4-81 provided they have completed 120 days as on 31-12-84 in the panel. This document according to the Respondent, is binding on their side since the Ex. M-3 took place only after a detailed discussion with the union. In other words, it is the plea of the Respondent that the Employees Union who espouses the cause of the workmen cannot get over the same. It is clear from Ex. M-3 that the employees who were completed 120 days from 1-4-81 to 31-12-84 will be included in the panel. However, it cannot take away any right vested on the Petitioner under the Provisions of the Industrial Disputes Act. Ex. M-3 not being a settlement and only a minutes of discussion, it cannot be said to be binding on the Petitioner. There is nothing on record to show that by reason of minutes of discussion a settlement was arrived at subsequently. It is significant to note at this stage that representations were made by the Petitioner under Ex. W-3 W-4 and W-6 for retaining him and were rejected for the same that his name was not sponsored by the Employment Exchange. At this stage the learned counsel for the Petitioner would draw my attention to a decision reported in 1987—1—LLJ, page 545 at 551 (Union of India and others vs. N. Hargopal and others). In that case, the question raised before the Supreme Court was that whether an establishment in the public sector or an establishment in the private sector as defined in the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 may make appointments to posts, to which Act applies to all persons not sponsored by the Employment Exchanges. A further question also arose namely, whether the Act covers Government Establishments also. The Division Bench of Andhra Pradesh High Court held that the Act has no application to Government, Establishments, that the Act casts no obligation either on the public sector establishment or on the private sector establishment to make the appointments from among candidate sponsored by the Employment Exchanges only and that any insistence that candidates sponsored by the Employment Exchanges alone should be appointed would be contrary to the right guaranteed by Articles 14 and 16 of the Constitution. In the appeal before the Supreme Court, the judgement of the High Court regarding that Act is not applicable to Government Establishments was set aside. The Supreme Court further held that there is no provision in the Act which obliges an employer to make appointment through the agency of the employment exchange. On the other hand, Section 4(4) of the Act makes it explicitly clear that the employer is under no obligation to recruit any persons through employment exchanges to fill in the vacancies merely because the vacancy has been notified under Section 4(1) or Section 4(2) of the Act. The main object in the Act is that an obligation is placed on the employer to notify the vacancies that may arise in their establishment before filling those vacancies. The object of the Act is not to restrict the field of choice in any particular manner but to charge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. The Supreme Court further reiterated that the Act does not obliges any Employer to employ those person only who have been sponsored by the employment exchanges. The Supreme Court further held that the Government is at perfect liberty to issue instructions to its own

departments and organisations provided the instructions cannot bind other bodies which are created by statute and which function under the authority of statute. In the absence of any statutory prescription the statutory authority may however adopt and follow such instructions if it thinks fit. It is thus seen as rightly contended by the learned counsel for the Petitioner that the above decision has clearly held that these instructions, namely Exs. M-1 and M-2 do not bind them since the Respondent-Bank is created by the statute. On the other hand, the learned counsel for the Respondent-Management pointed out from the same decision, that in the absence of any statutory prescription, the statutory authority can adopt and follow such instructions as it may think fit. It may be true, but the Supreme Court has categorically laid down that any direction by the Government in the matter of appointments to the statutory bodies and those instructions are not binding.

7. It is relevant to note that and is also not disputed that as per Bipartite Settlement Para 20.12 preference should be given to the employees who had already worked. In this connection, Section 25-H of the Industrial Disputes Act, 1947 has also been relied on by the Petitioner. It says,

"Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman) who offer themselves for re-employment shall have preference over other persons."

But the learned counsel for the Respondent would straight-away contend that Section 25-H cannot be invoked for the reason that the Petitioner was not retrenched and consequently no preference can be claimed by the Petitioner. The Respondent instead of retrenching or terminating the Petitioner has ingeniously taken a plea that he has been disengaged since he being a temporary sub-staff working in leave vacancies. It only appears to get over the difficulties and the rights which the Petitioner may claim later on, it has been thought off to state that he has been disengaged which would in effect amount to termination or removal from service of the Petitioner.

8. It is urged by the learned counsel for the Respondent Petitioner since had not completed 120 days as on 31-12-84, he cannot be considered for empanelling in the list as per Ex. M-3 minutes of discussion. But according to the Petitioner Ex. W-11 Statement showing the number of days worked by the Petitioner comes to 109 days. The Respondent does not dispute the actual days worked by him. However the Petitioner would urge that inclusive of holidays and Sundays, he would have completed 120 days. At this stage that he having been engaged inspite of Government Circular under Ex. M-1 as far as 1978, it is not open to the Respondent-Management to terminate his service over night on the ground that his application was not sponsored by the Employment Exchange. In other words, the plea of the Petitioner is that the Respondent is hit by the principles of estoppel. Reliance is placed in A.I.R. 1976 (Supreme Court page 376 at 381; Shri Krishna vs. The Kurukshetra University, Kurukshetra) para 7, wherein it has been held that the University authorities having acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidates of the appellant. Similarly, reliance was also placed in an unreported decision W.P. No. 6733/82 held by the Hon'ble Justice Ramonujam that it is not open to the authorities to terminate the services on the ground that he is not qualified as per rules after having allowed the candidate to take the examination and also having appointed him. The learned counsel for the Respondent contended that the principle of promissory estoppel cannot be invoked against the Bank since the Petitioner has no right to claim employment automatically. Therefore, as rightly pointed out it is a case wherefore no fault of the Petitioner he has been disengaged on the basis of some instructions issued under Ex. M-1. It has already been seen that instructions contained in Ex. M1

are not binding on the Bank as per decision of the Supreme Court reported in 1987—I—L.L.J. page 545 at 551 (Union of India and others vs. N. Hargopal and others). Above all, the Respondent cannot get over the principle of estoppel also.

9. The learned counsel for the Respondent raised a contention that the very reference itself is bad since there was no question of termination of the Petitioner as he was only disengaged for a particular date. It is also urged that the reference should have been only regarding whether disengagement of the Petitioner from 15-10-82 is justified. I am unable to agree with this contention since for all purposes the Petitioner has been removed from service whatever manner it may be called whether disengagement, termination or removal. As observed elsewhere it is only an ingenuous plea raised by the Bank for having terminated the services of the Petitioner. It is also relevant to note that the Respondent had not taken into consideration while disengaging the services of the Petitioner, the provisions of Section 25-H of the Industrial Disputes Act which is mandatory. According to this Section, retrenched persons should have been offered re-employment giving preference, to other persons. It is not the case of the Respondent that subsequent to the Petitioner's disengagement, no other persons were appointed. For all these reasons, this point is found in favour of the Petitioner-workman.

10. POINT (2).—In the result the Respondent is directed to reinstate the Petitioner without backwages, and attendant benefits within one month from the date of publication of this award. There will be no order as to costs.

Dated, this the 15th day of November, 1989.

K. NATARAJAN, Industrial Tribunal
[No. I-12012/265/88-D.II(A)]

WITNESSES EXAMINED

For both sides : None.

DOCUMENTS MARKED

For Workman :

- Ex. W-1/16-10-82—Termination order issued to Thiru R. Ihakshinamurthy (Xerox copy).
- Ex. W-2/10-11-81.—Letter from the Employment Exchange to Thiru R. Ihakshinamurthy (Xerox copy).
- Ex. W-3/10-12-82—Letter from R. Ihakshinamurthy to the Regional Manager, Villupuram (Xerox copy).
- Ex. W-4/8-4-83—Letter from Thiru R. Ihakshinamurthy to the Deputy General Manager (PL) Madras-1 (Xerox copy).
- Ex. W-5/8-4-83—Statement showing number of days worked by Thiru R. Ihakshinamurthy (Xerox copy).
- Ex. W-6/29-6-87—Letter from Thiru R. Ihakshinamurthy to the Assistant Labour Commissioner (Central) Madras-6 (Xerox copy).
- Ex. W-7/11-4-88—do
- Ex. W-8/15/18-4-88—Conciliation Failure Report (Xerox copy).
- Ex. W-9/15/18-4-88—BIO-DATA of Thiru R. Ihakshinamurthy (Xerox copy).
- Ex. W-10/20-8-81—Circular No. 116/81 issued by the Management Bank to all Branches/Area Managers/Regional Managers/Zonal Managers and Heads of Departments (Xerox copy).

Ex. W-11/27-8-82—Circular No. 132/82 do

Ex. W-12/9-11-82—Circular No. 166/82 do

For Management :

- Ex. M-1/30-9-78—Circular issued by Government of India Ministry of Finance, Department of Economic Affairs (Banking Division) (Xerox copy).

Ex.M-2/23-12-81—Letter from Central Government to the Management Bank (Xerox copy).

Ex. M-3/25-11-85—Minutes of discussions held between the Management of Indian Bank and the Federation of Indian Bank-Employees Union (Xerox copy).

का. मा. 469.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संघर्ष निरीक्षणों और उनके कर्मचारियों के बीच, अनुसूच में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचसद को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 469.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 155 of 1988

PARTIES :

Employers in relation to the management of Allahabad Bank, Patna.

AND

Their Workmen.

APPEARANCES :

For the Employers : Shri Srikanth, Law Officer.

For the Workmen : Shri S. K. Tiwary, President, Bihar State Allahabad Bank Employees Union (N.C.B.E.).
(At the time of last hearing—None).

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 28th December, 1989

AWARD

By Order No. L-12011/39/88-D.II(A), dated the 29th November, 1988, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Allahabad Bank in not filling the posts of Special Assistants since 1985 in Bihar State under the Assistant General Manager, Patna is justified? If not, to what relief the workmen concerned entitled?"

2. The case of the management of Allahabad Bank, as appearing from the written statement submitted on its behalf, details apart, is as follows :

Allahabad Bank is nationalised Bank having its Head Office at Calcutta and Zonal Office at Patna. Functioning of the Bank is governed by the concern laws of the land, award and bi-partite settlement in force. In terms of the Fourth Bi-partite Settlement dated 17-9-66 for filling up the posts of Special Assistants in clerical cadre, suitability has to be

determined by the Bank by interview of senior willing employees with weightage of qualification. Where such suitability is assessed only on the basis of interview, there shall be a period of probation for six months. In view of Fourth Bi-partite Settlement selection to the post of special Assistant on the basis of seniority only was kept in abeyance. It was essential to enter into another settlement for Allahabad Bank Employees Co-ordination Committee, the recognised union, to amend the provisions of the Rules for promotion dated 22-1-83 and 14-4-83. An agreement on the new provision was arrived at between the management and the Co-ordination Committee, the recognised union, on 14-3-86 and accordingly amendment in the relevant provisions i.e. Part V and Part VII of the Rules for promotion was incorporated. The policy for filling up of vacancies of Special Assistants is not confined to Bihar Zone alone but covering the entire branch net work of the Bank. Therefore, the action to circulate the vacancy was taken on 9-9-86 as per the guidelines incorporating the abovementioned provision were taken by the Head Office. The union raised an industrial dispute before the A.L.C.(C), Dhanbad. In the meantime the management and All India Allahabad Bank Employees Co-ordination Committee (Representatives of majority and recognised Union) entered into an agreement to the effect that a joint study would be undertaken to work out norms for filling the vacancies. It had, therefore, been decided to keep the filling up of the vacancies in abeyance till a common formula is evolved to fill up these posts. Accordingly, the selection process which was initiated, had to be kept in abeyance. Subsequently, selection process of Special Assistant was taken up by the management by Circular No. BZ/Admn/CL/125/99/1 dated 5-1-88 and BZ/Admn/CL/88/4 dated 2-5-89. In all, 148 applications were received for filling up the vacancies and as per seniority and as per norms 11 vacancies existed and 33 candidates were called for interview as notified in Circular No. BZ/Admn/125/88/12 dated 29-6-88. The candidates so identified as the senior most were interviewed on 20-7-89 and selection was made. In the meantime, Allahabad Bank Employees Union raised an industrial dispute over the shifting of vacancies before the A.L.C.(C), Dhanbad. The A.L.C.(C), Dhanbad issued notice under section 33 of the Industrial Disputes Act to keep the selection process in abeyance pending conclusion of the conciliation proceeding in the above dispute. Conciliation proceeding ended in failure on 12-9-88 and thereafter action to fill up the vacancies were initiated and the same has been concluded by circularising a list of successful candidates vide letter No. BZ/Admn/125/2679 dated 20-12-88 and they have joined their duties with effect from 9-1-89. In the context of above facts and circumstances there was no mala fide intention on the part of the management to delay the process for filling up the vacancies.

3. The case of the Bihar State Allahabad Bank Employees Union, the sponsoring union, as appearing from the written statement submitted on its behalf, briefly stated, is as follows:

It is a fundamental right of every public servant to seek higher promotion if he is eligible therefor and to obstruct the path of promotion amounts to infringement of his fundamental right under Article 16 of the Constitution of India. The Allahabad Bank by Circular dated 16-9-86 issued by the Zonal Office, Patna confirmed that vacancy in the post of Special Assistant existed at Shekhanura, Gaya, Silwa, Islampur, Purnea, Bhojpur, Darbhanga, Madhubani, Siwan, Begusarai, Tatisilwa, Aditvapour, Chakradharpur, Dumka, Harmu Colony, B.C.C.I. IV, Kumar Dhubi, Nirea, Kharikhari, Jachidih, Giridih and Gomoh. The Asstt. General Manager, Bihar, Patna, by its letter No. 7/8/87/IR dated nil submitted to the Asstt. Labour Commissioner (Central), Patna, supported this statement of facts. It was stated by the Bank it genuinely circulated the vacancies of Special Assistant and it was already in the process of filling up of vacancies. But the Bank reneged on its assurance given to the A.L.C.(C), Patna and stated that Bank management at Head Office level entered into an agreement with All India Allahabad Bank Co-ordination Committee. The management having recourse to this method, was out to put the workmen to loss by not giving promotion them promotion as Special Assistants. It is alleged that the Bank entered into an agreement with All India Allahabad Bank Co-ordination Committee states union of the management and this union never cared for the interest of the

workmen. Even so, the Bank had filled up the post of Special Assistants after 17-9-1988 in some places, such as, (1) Giridih, (2) Islampur, (3) Madhubani, (4) Chakradharpur, (5) Darbhanga, (6) B.C.C.I. Area-4, (7) Kumardhubi, (8) Begusarai, (9) Bokaro Steel City, (10) Marhowrah and (11) Govindpur. The point for consideration by this Tribunal is why these posts of Special Assistants were kept vacant so long and why these existing vacancies are not being filled up. The union has asserted that it is not a party to the agreement between the management the Co-ordination Committee and so this agreement is not binding upon it. In the circumstances, the union has prayed that the action of the management of Allahabad Bank in not filling up the posts of Special Assistants since 1985 be held to be not justified.

4. In rejoinder to the written statement of the sponsoring union, the management has stated that it has never obstructed the promotion. A list of 33 senior most clerks was prepared for selection to 11 posts of Special Assistants and hence there is no irregularity in the action of the management. All India Allahabad Bank Co-ordination Committee represented all award staff of the Bank and hence the settlement entered into with the management of the Bank and Co-ordination Committee is binding on all the award staff of the Bank.

5. In rejoinder to the written statement of the management, the sponsoring union has stated that the management has mis-represented facts in order to serve its purpose. The fact is that there existed vacancy of Special Assistants before 16-9-86 and out of 21 vacancies only 11 have been filled up. Thus, the Bank has not filled up remaining 10 vacancies and in doing so it has been causing the workmen to suffer.

6. The management of the Allahabad Bank in support of its action, has examined Sri L. Govinda Rao, Dy. Personnel Manager at the Zonal Office of Allahabad Bank at Patna, as MW-1 and laid in evidence a number of documents which have been marked Ext. M-1 to M-7. On the other hand, the sponsoring union has laid in evidence a sheaf of documents which has been marked Exts. W-1 to W-4.

7. Admittedly, Allahabad Bank (hereinafter referred to as the Bank) is a nationalised Bank having its Head Office at Calcutta and Zonal Office at Patna. It has also remained undisputed that the functioning of the Bank is governed by the law of the land, the awards and Bi-partite settlement in force and that there exists posts of Special Assistants in the clerical grade in different offices of the Bank.

8. By Circular dated 16-9-86 the Bank notified 21 vacancies in the post of Special Assistants in the offices of the Bank at Patna, Muzaffarpur and Ranchi in the State of Bihar and invited applications from the qualified candidates (Ext. W-3). Closely on the heels of the above circular the Bank arrived at 4th Bi-partite Settlement dated 17-9-1986 with Allahabad Bank Employees Co-ordination Committee, the recognised union, for filling up the posts of Special Assistants in clerical grade. MW-1 L. Govinda Rao has stated that the Bi-partite Settlement envisages that posts of Special Assistants should be filled in by selection from amongst the senior most willing staff on clerical cadre. In the written statement the Bank has stated that suitability of the staff selected for the post of Special Assistants has to be determined by interview of senior willing employees with weightage for qualification. Even in spite of the 4th Bi-partite Settlement selection for the posts of Special Assistants was not done by the management and the sponsoring union was constrained to raise the present industrial dispute before A.L.C.(C), Dhanbad. The Bank has produced the relevant provision of the 4th Bi-partite Settlement which has been marked Ext. M-1. It appears from Ext. M-1 that certain norms has been fixed for filling in the post of Special Assistants in clerical cadre and that suitability will be determined by the Bank for such post on the basis of interview of senior employees having weightage for their qualification.

9. The Bank has pleaded in its written statement that in view of 4th Bi-partite Settlement selection to the post of Special Assistants on the basis of seniority only was kept in

abeyance as it was essential to enter into another settlement with Allahabad Bank Employees Co-ordination Committee, the recognised union, to amend the provision for the rules of promotion dated 21-1-83 and 14-4-83 and that an agreement on the new provision was arrived at between the management and the recognised union on 14-3-86. The pleading of the Bank further indicates that the management and the Co-ordination Committee entered into an agreement to the effect that the joint Study would be undertaken to work out norm for filling in the vacancies and it was decided to keep the process of filling in the vacancies in abeyance till a common formula was evolved and accordingly the selection process was kept in abeyance. MW-1 Sri L. Govinda Rao has stated that a Committee was constituted with the participation of the management and recognised union to decide the norms for identifying the vacancies of the posts of Special Assistants for the entire Bank and the Head Office issued instruction to keep in abeyance selection of future vacancies till revised norms are finalised. He has further stated that selection in the post of Special Assistant in the State of Bihar was made in August/September, 1988 but the posting was kept in abeyance due to instructions of A.L.C.(C), Dhanbad. It appears that by letter dated 5-8-88 the A.L.C.(C) requested the management to keep the result of the test held on 19-7-88 in abeyance pending conclusion of the conciliation proceeding (Ext. M-7).

10. Admittedly, the embargo imposed by the A.L.C.(C) in holding back result of test was lifted when the conciliation proceeding ended in a failure.

11. By Circular dated 2-5-88 (Ext. M-2) the Bank initiated the process for filling in the vacancy in the post of Special Assistant at 11 different branches of the Bank. It appears from another circular dated 29-6-88 that in response to this circular, 148 applications were received out of which a list of 33 senior most candidates was prepared (Ext. M-3). It appears from another circular dated 15-9-88 that interview was held on 20-7-88 instead of 19-7-88 at the Zonal Office, Patna and out of 29 candidates, 11 appeared in the interview, 4 remaining absent and 11 candidates were selected including Sunil Kumar Tiwary, the President of the sponsoring union who topped the list (Ext. M-4). But the Bank could not declare the result as per direction of the A.L.C.(C), Dhanbad. After the conciliation proceeding ended in a failure the Bank declared the result and made posting of the candidates selected for the post of Special Assistant by Circular dated 20-12-85 (Ext. M-5).

MW-1 L. Govinda Rao has stated that 21 vacancies which were originally notified including both existing and future vacancies. Since the Bank has filled in the existing vacancies nothing remains to be done by it for the present in so far as the filling in the posts of Special Assistants is concerned.

12. Accordingly, the following award is rendered,—the action of the management of Allahabad Bank is considered justified as it has since filled in the vacancies existing in the post of Special Assistants in the State of Bihar.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

[No. L-12011/39/88-B.II(A)]

का. प्र. 470 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार औद्योगिक बैंक का काम में प्रबन्धन के संबंध निरीक्षणों और उनके कर्मचारियों के बीच अन्तर्गत में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचद को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था ।

S.O. 470.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh, as shown in the Annexure

in the industrial dispute between the employers in relation to the Oriental Bank of Commerce and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I.D. 126/83

PARTIES :

Employers in relation to the management of Oriental Bank of Commerce.

AND

Their workman : Ashwani Kumar.

APPEARANCES :

For the workman—Shri Tara Chand Gupta.

For the management—Shri H. C. Dhall.

AWARD

Dated : 29-11-1989

On a dispute raised by Shri Ashwani Kumar against the management of Oriental Bank of Commerce, Central Government had vide No. L-12012/83/79-D.IIA dated 2-8-1980 referred the following dispute to this Tribunal for decision:

"Whether the action of the management of Oriental Bank of Commerce Ltd. Sector 17B Bank Square, Chandigarh in terminating the services of Shri Ashwani Kumar Sharma Convensor in Sharifpura branch with effect from June 9th, 1976 is justified. If not, to what relief the workman concerned is entitled?"

2. Case of the workman Ashwani Kumar as set out in the claim statement is that he joined the employment of Oriental Bank of Commerce at Sharifpura Bank Branch Amritsar with effect from 18-5-1975 when the said branch was opened. The formal letter of his appointment was however issued by the Regional Manager of Bank on 25-10-1975 appointing him as convensor on probation for six months and the period of probation was extended piece meals without assigning any reason. His services were however abruptly terminated on 9-6-1976 without serving him with one month notice or pay in lieu thereof and without payment of retrenchment compensation though he had put in more than 240 days service. His main contention is that period of his service from 18-9-1975 till the date of his appointment on probation had to be taken into account as part of his probationary period. The management resorted to unfair labour practice and acted in breach of directions contained in paragraph 495 of the Sastri Award clause 20:8 of the Bipartite Settlement dated 19-10-1966 and para 21:18 of Desai Award. He contends that his letter of appointment dated 25-10-1975 incorporated a condition about his confirmation subject to securing deposit of Rs. 25 lakhs, which condition was repugnant to the provisions of the Sastri and Desai Awards governing the confirmation of the probation though he had succeeded in crossing the target of Rs. 25 lakhs. He pleaded further that branch manager was not competent to extend his probation as the appointing authority in his case was Regional Manager of the Bank at Chandigarh and order of termination of his services passed by the Branch Manager who was subordinate to the Regional Manager was invalid. He seeks that the order of termination of his service dated 9-6-1976 be set aside and he be re-instated as a confirmed workman with continuity of service and full back wages besides payment of suitable costs.

3. The management in its answer filed took plea that the services of the petitioner were never terminated and he was simply not granted any further extension when his already

extended period came to an end by afflux of time. The management has taken objection that the dispute raised by the petitioner is not tenable as he slept over the matter for a considerable time and raised the dispute belatedly on 10-4-1979. On merits it is pleaded that the petitioner had worked in the Sharifpura branch as a trainee by entering into some arrangement with the then branch manager on personal level and without any authority or permission from the Head Office. It is contended that as per Sastri Award any appointment can not be made without letter of appointment and the management had issued letter dated 25-10-1975 appointing the petitioner as convensor to which letter the petitioner never raised any objection. As regards order of termination it is pleaded that it is not letter of termination but a letter advising that the probation period duly extended came to an end and the said letter was issued by the branch manager as per instructions of the head office. Management has taken plea that no reason for granting extension was required to be disclosed. It is pleaded further that the workman had miserably failed to cross the target and the bank with a view to enable the petitioner to achieve the target was justified in granting him further opportunity by extending the period of probation.

4. Ashwani Kumar petitioner also filed an application U/S 33-C(2) of the I.D. Act, 1947 registered as LC No. 47/83 claiming amount of pay and other allowance for the period 18-9-75 to 26-10-1975 amounting to Rs. 500. The same was contested by the management. The then Presiding Officer through his order dated 27-4-1984 had amalgamated I.C. No. 47/83 I.D. No. 126/83 for common adjudication with direction that all the proceedings will be conducted in the industrial dispute reference case.

5. The parties were allowed opportunity to lead evidence in support of their respective contentions. Ashwani Kumar workman filed affidavit Ex. W1 reiterating the allegations made in the statement of claim. During his cross-examination he admitted that he did not make any written request to regularise his appointment order and reported on 27-10-1975 for duty. He also admitted that he was employed for deposit mobilisation and he started marking his attendance with effect from 27-10-1975 on the attendance register sheets copies of which are Ex. R4 to R11. He admitted that he did not make any written request for regularisation of his appointment with effect from 18-9-1975 and that he in compliance of his appointment letter he had reported for duty on 27-10-1975.

In rebuttal the management filed affidavits Ex. R12 and R17 of Shri R. C. Nagar then branch manager Sharifpura branch Amritsar. In his affidavit Shri R. C. Nagar who appeared as MW1 has stated that Ashwani Kumar Sharma petitioner had requested that he may be imparted training so that thereafter he could apply for regular appointment. Shri R. C. Nagar stated that he had advised the petitioner to visit the branch to become conversant with bank procedure. Shri Nagar has averred that this was personal arrangement between him and the petitioner and the workman after having gained some training, was appointed as probationer vide letter dated 25-10-1975 which he accepted without raising any objection. It has been further stated by Shri Nagar that the petitioner had unauthorisedly marked his attendance for few days (6 days) and was stopped to do so the moment it came to the notice of the management. During his cross-examination he admitted that during 18-9-1975 to 27-10-1975 the petitioner would some time bring deposit and some time he would sit in the branch and attend to the clerical work.

Shri Amrit Rai Manager (C) Head Office filed affidavit Ex. MW2/1 to the effect that petitioner/workman was appointed vide letter dated 25-10-1975 and no further appointment letter was issued to him.

6. The evidence consisting of statement of the witnesses examined and the documents produced by the parties discloses that Sharifpura Branch of the Bank was opened on 18-9-1975. Shri Ashwani Kumar Sharma petitioner started visiting the said branch under personal arrangement struck

with the then Branch Manager Shri R. C. Nagar MW1. He had attended to clerical work and in response to his appointment letter dated 25-10-1975 he reported for duty on 27-10-1975 as evidence from letter photocopy of which is Ex. R20 wherein the petitioner has mentioned in his own hand that he had reported for duty on 27-10-75 with reference to his appointment letter No. Staff—833 dated 25-10-1975. It is in evidence that in his performance reports running into seven sheets Shri Ashwani Kumar Sharma petitioner had mentioned in his own hand the date of his joining as 27-10-1975.

7. The main point for determination in this case is whether the period 18-9-1975 to 27-10-1975 is to be treated as period of employment or not. In case the said period is to be treated as employment the workman certainly put in 240 days in a calendar year preceding retrenchment/termination. In case the said period from 18-9-1975 to 27-10-1975 is not counted as period of his employment then he works for less than 240 days and thus not entitled to relief U/S 25F of the I.D. Act, 1947. The learned counsel for the management submits that workman on personal level was going to the Bank and learning the work from the then branch manager Shri R. C. Nagar and this act of the petitioner cannot bind the bank in any manner. The workman on the other hand contends that he had joined the services of the bank on opening of the branch on 18-9-1975 and only as a formality letter of appointment was issued on 27-10-1975. He contends that he submitted an application to the Bank and was duly selected for appointment after interview but no formal letter of appointment was given to him while taking him in service from 18-9-1975.

The evidence discussed above shows that he was allowed to mark his attendance in the muster roll of the branch from 18-9-1975 to 23-6-1975 but thereafter he was disallowed by doing so by the branch manager for the reasons noted in the attendance register which reads as under :

"In the absence of any appointment letter Shri A. K. Sharma is not authorised to mark attendance."

There is no denial to the fact that Shri A. K. Sharma had neither claimed nor was paid salary for the period 18-9-1975 to 26-10-1975. At no earlier stage he had raised objection against the appointment letter dated 25-10-1975 and had rather joined duty on 25-10-1975 in response to the said letter. He had himself mentioned the date of his appointment as 27-10-1975 in his performance reports referred above. I fully agree with the contentions of management that personal arrangement arrived at with the branch manager by a candidate hoping for appointment in the Bank can not bind the Bank and the service rendered gratuitously for private training can not be accepted as his temporary employment so as to seek in aid benefits of Clause 20:8 of the Bipartite Settlement dated 19-10-1966. The petitioner is not entitled to the benefit of the said clause as he was not in any temporary employment of the Bank and was not finally selected or appointed by the Bank. As regards violation of Para 495 of the Sastri Award and Clause 21:18 of the Desai Award is concerned it may be stated that the provisions stated therein only envisage that ordinarily the period of probation should not exceed six months. The provisions contained in para 495 of the Sastri Award which stands modified by clause 21:18 of the Desai Award further envisage that it should be open to the Bank before expiry of the period of probation to extend the period of probation for a further period of 3 months by giving notice to the workman in writing to that effect. If he does not desire to continue as a probationer for such further period, it would be open to him to intimate to the bank to that effect and leave the services of the Bank. The said provisions do not forbid extension of the probation period of less than three months and only put outer limit of extension of three months. Non-service of notice before the extension of probation period had no fatal effect in the present case for the reason that petitioner had accepted the extension granted to him by the management to achieve the target of deposit mobilisation. The workman has questioned

the management's findings about his non-achievement of the target. Relying upon the certificate issued by other branches he contends that he had mobilised deposits of more than 25 lakhs during the period 18-9-1975 to 9-6-1976. The achievement or non-achievement of target has no bearing on the decision of the case. The workman has also questioned the authority of the branch manager to extend the period of probation but the same were done under instructions of the Regional Manager as mentioned in the letters themselves and same is the position in respect of the letter relieving the petitioner. The claim of the petitioner is even otherwise stale in as much as his services were dispensed with in 1975 and he raised the dispute on 10-4-1979 after a period of about three years.

The discussion above shows that the period for which the petitioner had worked as a trainee under personal arrangement arrived at between the then branch manager and workmen could not be counted as period of employment and as such the petitioner had not rendered 240 days service in a calendar year preceding dated 9-6-76 when he was relieved of his duties on expiry of his extended period of probation. He can not be deemed to have been confirmed on expiry of probation period on 25-4-1976 either in terms of para 495 of the Sastri Award or in terms of Clause 21-18 of the Desai Award. The extension in probation does not suffer from any legal infirmity. There is no merit in the claim of the petitioner for his re-instatement as a confirmed workman with continuity of service and full backwages. The claim petition U/S 33-C(2) registered as LVA No. 47/83 is rejected.

The reference is returned with the findings that action of the management of Oriental Bank of Commerce, Chandigarh in dispensing with the services of Shri Ashwani Kumar Sharma with effect from 9-6-1976 is justified and he is not entitled to any relief whatsoever.

Chandigarh,

29-11-1989.

M. S. NAGRA, Presiding Officer

[No. L-12012/83/79-D.II(A)]

का. सा. 471.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रवचन में केन्द्रीय सरकार बैंक आफ बरोडा के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, झुंझ में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 471.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby makes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 42 of 1983

PARTIES

Employers in relation to the management of Bank of Baroda Calcutta.

AND

Their workmen.

APPEARANCES :

On behalf of employer—Mr. L. N. Basak, Senior Manager (Personnel) of the Bank.

On behalf of workmen—Mr. Rajen Nagar, General Secretary of the Union.

STATE : West Bengal.

INDUSTRY : Banking.

AWARD

By Order No. L-12011/46/82-D.II (A) dated 13th July, 1983, the Government of India, Ministry of Labour and Rehabilitation (Department of Labour) referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Bank of Baroda, Calcutta in not including the names of 8 casual canteen boys named in the Annexure in the list of casual canteen boys eligible for employment in leave vacancies, as notified in their Circular dated 6-4-1981, is justified? If not, to what relief are the workmen concerned entitled?"

ANNEXURE

S. No.	Name of the workman	Name of the branch
1.	Shri Naba Kumar Nandi	Be'gharia
2.	Shri Tilak Kumar Naskar	Dharmatala
3.	Shri R. Rabindran	Tollygunge
4.	Shri Kali Pada Paul	Sealdah
5.	Shri N. K. Nandi	Landsdown Market
6.	Shri Gobind Paul	Suryasen Street
7.	Shri Gopal Mondal	Sealdah
8.	Shri Samir Kumar Mitra	Jodhpur Park

2. When the case is called out today for hearing the argument of the parties, Mr. L. N. Basak, Senior Manager (Personnel) of the Bank appears for the employer and Mr. Rajen Nagar, General Secretary of the Union appears for the workmen. Mr. Nagar files a petition stating therein that the Union is not interested to proceed with the present reference and has prayed for a "No Dispute Award". Mr. Basak appearing on behalf of the employer has no objection in this regard.

3. On due consideration of the petition of the Union as well as the submission of the parties, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

Dated, Calcutta,
The 4th January, 1990.

SUKUMAR CHAKRAVARTY, Presiding Officer

[No. L-12011/46/82-D.II (A)]

का. सा. 472.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रवचन में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, झुंझ में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, कोयंबट के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 472.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Quilon as shown in the Annexure in the Industrial dispute between the employers in relation to the Canara Bank and their workmen, which was received by the Central Government.

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, QUILON

(Dated, this the 23rd day of December, 1989)

Industrial Dispute No. 9/88

BETWEEN

The Assistant General Manager, Canara Bank. Staff Section (Workmen) Trivandrum Circle, M. G. Road, Trivandrum.

(By Sri. S. Subrayakalkura, Advocate, Vanchyoor, Trivandrum)

AND

The Secretary, Canara Bank Employees' Union, SBIFU Building P.B. No. 157, Trivandrum.

(By Sri. K. Muralidharan Nair, Advocate, Trivandrum)

AWARD

The Government of India, as per Order No. L-12011/110/87-D. II(A) dated 21-9-1988 has referred this industrial dispute to this Tribunal for adjudication. The issue to be resolved is

SCHEDULE

Whether the action of the management of Canara Bank in directing their employees working at Iroopara Branch to apply for one day's casual leave on 1-9-86 quoting para 511 of the Sastri Award is justified? If not, to what relief are the concerned workmen entitled?

2. The secretary of the contesting union has filed a claim statement and the pleadings are as under : The management Bank has a branch at Iroopara, Trivandrum (For short 'the branch'). The Democratic Youth Federation of India, (for short DYFI) on 1-9-1986 observed a bundh at Iroopara protesting against an assault on some of their members by police. The staff of the branch reported for duty by 9.55 A.M. on that day. But the branch did not open by the manager and the accountant stating that the situation in that place was tense. Police were not summoned and no effort was made to open the branch. The moned waited from 10 A.M. to 5 P.M. but the branch was not opened and hence they could not work. Subsequently the management directed the staff of that branch to submit Casual Leave applications for that day which was opposed by the workmen and that resulted in this dispute. The case of the union is that the failure of management to open the branch cannot be used to penalise the employees. The employees reported for work and were prepared to work. They were not informed that the branch would not be opened. Hence they were forced to wait. The branch was opened due to any fault of the employees. The extra ordinary situations contemplated by paragraph 511 of the Sastri Award did not exist at Iroopara on that day and the management cannot claim justification for their failure under that paragraph. The above paragraph could not be applied in the present case. The practice followed in the Bank was to treat employees who reported for work as being on duty if they could not work due to circumstances beyond their control. According to the union the action of management is illegal and unjustified.

3. The management opposes the case of the union and contends as under : This Tribunal has no jurisdiction what so ever to entertain the present claim and the claims are unsustainable in law. On 1-9-1986 due to the bundh observed by DYFI a substantial crowd had gathered in front of Iroopara branch. The crowd was in an agitative mood and the Bank officials were prevented from opening the branch by blocking the way. The situation was tense. The manager attempted to obtain police help but the police authorities failed to respond. All possible steps were taken to open the branch but that was in vain. That area is a strong hold of DYFI. Any attempt on the part of the manager to open the branch without police help would have led to violence and breach of peace. The situation which was tense was beyond the control of the Bank and without police help the manager was not in a position to open the branch. The employees did not remain there from 9.55 A.M. to 5 P.M. They immediately returned after knowing the position. The service conditions of the employees of the Bank in India are governed by Sastri Award and the bipartite settlement entered into between the Banks Association and their recognised unions. As per paragraph 511 of Sastri Award the management is empowered to treat the absence of employees

on 1-9-1986 as leave. According to the management the action taken by it on that day was in order and perfectly legal as per the provisions of Sastri Award and rules prevailing in the banking industry.

4. One of the employees of the branch has given evidence as WW1 in support of the case of the union. The management has examined its manager as MW1 in support of its case.

5. Admittedly a bundh was observed by DYFI, off 1-9-1986 at Iroopara. MW1 has deposed that substantial crowd gathered in front of the branch and they were in an agitating mood. They prevented the post officials from opening the branch and the situation was tense. The manager attempted to get police help but the police did not respond. MW1 has stated that all possible steps were taken to open the branch. Since the management failed in their attempt, they directed the employees to apply for leave as per paragraph 511 of Sastri Award. The union has no case that the closure of the branch on that day was mala-fide and the branch could have functioned on that day. WW1 has deposed that the persons gathered stated that the branch should not be opened. The branch is functioning in the first floor of a building and the agitators started sitting in the steps leading to the upstairs and they stopped the way to the upstairs according to WW1. Admittedly all shops in the area were closed on that day. WW1 has admitted that he subsequently came to know that MW1 has informed the state of affairs to the division office of the branch over phone. Further according to WW1 the manager was not in a position to enter the branch without police help and that the people gathered there were shouting slogans. It is not the case of the union that the manager, MW1, purposely did not attempt to get police help. To a pointed question by the learned counsel for the management that MW1 had sought police help for opening the branch, WW1 has simply pleaded ignorance. There was no categorical denial from him. It has also come in evidence that any attempt to open the branch would have caused damage to the property of the Bank and would have caused law and order problem. In these circumstances, the management is justified in not opening the branch on 1-9-1986.

6. The question now remains is whether paragraph 511 of the Sastri Award is applicable in the situation existed on that day. According to the union the practice followed in the Bank in such circumstances was to treat employees who reported for work as being on duty if they could not work on account of circumstances beyond their control. Here the circumstances were beyond the control of management and the employees. It is specific to note that to a pointed suggestion by the learned counsel for the union that on 7-10-1985, another bundh day, the management treated the employees reported for work as on duty, MW1, the manager, was not in a position to deny that suggestion. His answer was that he can reply only after reference. The circumstances existed on 7-10-1985 may be different. But the management, who is in position of the relevant records regarding the practice followed on 7-10-1985, has not produced any records and rebutted the case of the union. As a matter of fact the management was called upon to produce the record pertaining to the bundh on 7-10-1985. It is true that union has filed a petition to that effect on 19-12-1989, when this case was posted for final hearing and that the learned counsel for management expressed inability to produce that document on that reason. But the learned counsel did not seek any adjournment or time for producing such document. The management has no case that they are not in possession of such a document. These circumstances also support the case of union. It is also pertinent to note that the case of the union in the claim statement that in similar circumstances the practice followed in the Bank was to treat the employees as on duty was not controverted by the management in its reply statement. It is irrelevant that all other employees, except WW1 have applied for leave as per the direction of the management for 1-9-1986. They might have done that due to fear of disciplinary action from the management in its reply statement. It is irrelevant that they are entitled to get relief on the basis of a practice followed in the Bank. The union has specifically pleaded that there existed a practice to treat the employees as on duty

who reported for work on such situations. The management has not rebutted that claim of the union. In this state of affairs I have no hesitation to hold that paragraph 511 of the Sasthri Award is not applicable here and the workers are entitled to get relief as per the practice followed by the management Bank on the bundh day on 7-10-1985.

7. In the result, an award is passed holding that the action of management in directing the employees of Laxmi branch to apply for leave on 1-9-1986 is unjustified. The workers are entitled to be treated as on duty and get back salary if any deduction was already made for that date.

C. N. SASIDHARAN, Industrial Tribunal
[No. L-12011/110/87-D.J.(A)]

APPENDIX

Witness examined on the side of the Union

WW1. Sri. K. Ganapathy Potti

Witness examined on the side of the Management

MW1. Sri. K. N. Krishnamoorthy Iyer

का. अ. 473 -- औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार मे, केन्द्रिय सरकार बंद आफ स्टिटा के प्रबंधन के संबंध दिवसों की ओर उनके कर्मचारियों के व. अ. अनुबंध में निम्नलिखित औद्योगिक विवाद में कम्प्रेस संस्था, औद्योगिक अधिकरण स. 2. वार्ड के पंचाट की प्रमाणित करने है, जो केन्द्रिय सरकार का प्रतिक्रिया था।

S.O. 473.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Reference No. CGIT-2/45 of 1988

PARTIES :

Employers in relation to management of Bank of India.

AND

Their Workmen

APPEARANCES

For the Employers—Shri R. B. Pitale, Labour Adviser.

For the Workmen—Shri Anil Phosiga Jr. Secretary,
Bank of India Workers' Organisation

INDUSTRY : Banking

STATE : Maharashtra

Bombay, the 12th December, 1986

AWARD

The Central Government by their Order No. L-12011/41 38-D.I. (A) dated 2-11-1988 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act :-

"Whether the action of the Management of Bank of India in relation to its Regional Office at Pune in changing the posting order of S/Shri J. R. Chapekar, A. G. Chinchalkar and Smt. C. N. Potnis who were posted at Pimpri Branch as ALPM/AEAM Operators to Fergusson Road and Laxmi Road Branches is justified? If not, to what relief are the concerned workmen entitled?"

2. The case of the Union as disclosed from the statement of claim filed by the Joint Secretary of the Bank of India Workers' Organisation (Ex. 2) in short, is thus :—

As per the Bipartite settlements dated 8-9-1983 and 29-3-1987 the Bank of India decided to install Advanced Ledger Posting Machines (ALPMs) or Advanced Electronic Accounting Machines (AEAMS) in different branches of the Bank in Pune City. On the strength of settlements dated 29-3-1987 and 24-7-1987 the Bank selected employees for the post of ALPM/AEAM Operators. The Bank firstly installed 12 machines at five branches namely Navi Peth, Pune City, Pimpri, Laxmi Road and Fergusson Road. The Bank changed the postings of candidates, viz. Shri J. R. Chapekar, Smt. C. N. Potnis and Shri A. G. Chinchalkar without any specific request from them in writing or oral. The posting of these three employees were changed from Pimpri Branch to Laxmi Road Branch, and Fergusson Road Branch. The Bank intended to change some of the postings of other selected employees also. One Shri Godbole who belongs to the Union in question, which is a minority Union, was also selected as ALPM Operator and is posted at Pune City Branch. The Union apprehended change in his posting, and hence raised an industrial dispute with the Assistant Labour Commissioner (C), Pune. Thus the Union challenged all the changes in the postings of ALPM Operators in the dispute. The contention of this Union is that because of these changes in the postings of the said employees from Pimpri to Laxmi Road and Fergusson Road Branches, the employees who are kept in the waiting list are required to go to Pimpri Branch only, when they had an opportunity to get the postings at other branches. Under the pretext of administrative changes in postings the Bank is favouring some of the employees belonging to the majority union. The minority Union in question states that this is being done due to pressure of the majority Union. As all the employees who were offered postings at Pimpri Branch after the above said changes have refused the offer, the Bank is facing practical difficulties at Pimpri Branch, and the machines installed are still totally inoperative. The Bank has failed to give any convincing reason for the above mentioned changes, and has also failed to give specific policy regarding further appointments in Pune City Branches. In the absence of any such policy, further industrial disputes are apprehended. The minority Union in question therefore prayed that this Tribunal should hold the action of the management in changing the postings of the said three employees at Pimpri Branch to Fergusson Road and Laxmi Road Branches as null and void, and that the management be directed to send back the above said three employees to their original place of postings.

3. The Bank of India by its written statement (Ex. 3) contested the claim of the said Union, and in substance contended thus :—

The Bank of India Staff Union is the majority Union, as 80 per cent of the employees employed in the Bank are the members of that Union. The Union which filed the statement of claim, i.e. the Bank of India Workers' Organisation is a minority Union. The majority Union has no grievance with the Bank in spite of the demands submitted by the minority Union. The said minority Union is not competent to espouse the cause of the workmen or to file statement of claim. No specific authority has been given to the Joint Secretary of the minority Union to espouse the cause of the workmen and no such material has been placed before this Tribunal. As such, no industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, exists in the present case.

4. The Bank further contended thus :—

The Bank introduced ALPMs/AEAMS machines in certain identified Branches from Pune local Branch.

ches, including Pimpri, in 1987 in terms of the Bipartite Settlement dated 29-3-1987. Pimpri Branch falls under the Pune Regional Office, and is treated as a Pune local branch. It is situated 17 kms. away from Pune. As per the provisions of various Award and Bipartite Settlements, the services of clerical staff are transferable anywhere within the same linguistic area in the exigencies of Bank's service. The three employees in question, namely, Shri J. R. Chaphakar, Shri A. G. Chinchalkar and Smt. C. N. Potnis were posted at Pimpri Branch as ALPM Operators. Even though the Bank has a right to post the selected candidates as ALPM/AEAM Operators at any of the branches where the machines are installed, the Bank within its discretion, considered the places of residence of the selected candidates/clerks before offering them posting at the Branches where the machines are installed. The three employees in question accepted the offer of the revised postings and subsequently were posted at Laxmi Road Branch and Fergusson Road Branch. Shri J. R. Chaphakar reported for duty at Laxmi Road Branch and Shri A. G. Chinchalkar and Smt. C. N. Potnis reported for duty at Fergusson Road Branch. The contention of the minority Union that the Bank intends to change some of the postings of other selected candidates also, is false and misleading. None of the employees mentioned in the reference has any grievance as regards their postings. The contention of the minority Union that due to change in the postings of the said three employees from Pimpri Branch to other Branches, the employees who are kept on waiting list, are required to go to Pimpri Branch only when they had an opportunity to get the postings at other branches, is imaginary, and without any base. The Bank, therefore, prayed for the rejection of the prayer of the minority Union, and to uphold the action of the management.

5 The necessary Issues have been framed at Ex. 4.

6. Thereafter, while the case was at the stage of evidence, the three employees in question, viz., Shri J. R. Chaphakar, Shri A. G. Chinchalkar and Smt. C. N. Potnis filed their respective applications (Exs. 6, 7 and 8) and also a joint application that they have no grievance about the said action of the Bank management, and the Reference be disposed of as not pressed. These three employees are the members of the majority Union. As such, the majority union, and the three employees in question have absolutely no grievance about the action taken by the Bank management in question. It is true that a minority union can raise an industrial dispute. However, as the majority union having 80% membership, and the three employees in question themselves have no grievance about their transfer from one place to another, the action of the Bank management in question cannot at all be said to be unjust or improper.

Further, the Bank management has every discretion to transfer the employees from one place to another. The place from which the employees in question are transferred to the other place are not at all far away from one another. The minority union by its application Ex. 9 has objected to such a disposal of the Reference. However, as the majority union, and the three employees in question themselves have no grievance and the objection in the matter, the Reference must be disposed of after holding the action in question as just and proper. Hence, the following Award is passed.

AWARD

The action of the management of Bank of India in relation to its Regional Office at Pune in changing the posting order of Shri J. R. Chaphakar, A. G. Chinchalkar and Smt. C. N. Potnis, who were posted at Pimpri Branch as Advanced Ledger Posting Machine/Advanced Electro Account Machine Operators to Fergusson Road and Laxmi Road Branches, is just and proper.

The parties to bear their own costs of this Reference.
Dated 12-12-1989

P. D. APSHANKAR, President Officer
[No. L-12011/41/88-D.II (A)]

का. ४७. 474.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुच्छेद में, केन्द्रीय सरकार सिन्डिकेट बैंक के प्रबंधन के संबंध में निम्नलिखित आदेशों के बावजूद, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मद्रास के संज्ञा का प्रयोग करता है, जो केन्द्रीय सरकार का प्राप्त हुआ था।

S.O. 474.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Madras as shown in the Annexure in the industrial dispute between the employers in relation to the Syndicate Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Tuesday, the 31st day of October, 1989

Industrial Dispute No. 63 of 1988

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of Syndicate Bank Madras-4)

BETWEEN

The workman represented by :

The General Secretary, Syndicate Bank Staff Union,
No. 5, Meeran Sahib Street, Mount Road, Madras-600002.

AND

The Assistant General Manager, Syndicate Bank, Zonal Office, No. 150, Luz Church Road Maylapore, Madras-600004.

REFERENCE :

Order No. L-12012/252/88-D.II (A), dated 13-9-1988 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru M. S. N. Rao, Authorised Representative appearing for the workman and of Thiruvallal J. Hariharan and S. Mohanty, Authorised Representatives for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

This dispute arises between the workman and the Management of Syndicate Bank, Zonal Office, Madras-4 under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/252/88-D.II (A), dated 13-9-1988 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the Management of Syndicate Bank in terminating the services of Shri M. Balachander is justified? If not, to what relief is the workman entitled?"

2. The averments in the claim Statement are that one Thiru Balachander entered the services of the Respondent-Bank on 20-1-1976 as an Attender and was working in Podampatti Branch of the Respondent-Bank on a basic pay of Rs. 430 plus Dearness Allowance. He was a temporary employee even according to the First Bipartite Settlement dated 19-10-1966. The Petitioner-Union states that one Thiru M. Balachander was appointed in the Respondent-Bank on 20-1-1986 and continued to work as Attender till 6-12-1986 when his services were illegally terminated by the Respondent-Bank. The said Balachander had put in service of 296 days within a period of twelve calendar months immediately preceding the date of the illegal termination of his service. Hence the Respondent-Bank shall not retrench service of

the workman except in accordance with the mandatory conditions set out in Section 25-F of the Industrial Disputes Act. The Respondent-Bank since violated the mandatory provisions of Section 25-F, the retrenchment is illegal and ab initio void. The Respondent-Bank has also violated Section 25-G and Section 25-H of the Industrial Disputes Act, in not following the principles of "Last come, first go" and also, by not offering employment to Thiru M. Balachander in the vacancies which arose subsequently. Hence the Petitioner prays an award may be passed directing the Respondent-Bank to reinstate Thiru M. Balachander retrospectively from 6-12-1986 with backwages and other benefits and also place him in seniority for purpose of allowance cadre post and such other relief.

3. The Respondent in their counter states that in the State of Tamil Nadu the Bank has over 80 branches and there is a panel of candidates selected for appointment as attendants on temporary basis from amongst the candidates sponsored by the local Employment Exchange. Thereafter, periodically depending upon their seniority in the Zone and on complying with other conditions they are considered for absorption into the permanent services of the bank as and when the regular vacancies arise. Till such time, the panelled candidates are continued to be offered entrustment of duties of attendants purely on temporary basis for a specific period whenever there is a vacancy. The candidate automatically ceases to be in the temporary employment of the bank since the specific contract itself gets concluded. The said Thiru M. Balachander is one of the empanelled candidates and he was appointed on temporary basis whenever there is a vacancy. Hence relieving him of his temporary duties on the expiry of the contract period would not attract Section 25-F of the Industrial Disputes Act. There is no legal compulsion or any rules in the Bank requiring absorption of the candidates who have worked as attendants temporarily on permanent basis once he completes 240 days in a block of 12 months. The signatories to the Bipartite Settlements did not make it mandatory for the Bank Managements to absorb permanent the candidates, persons who have worked as workmen temporarily for a continuous period of three or four months. The Management has not violated any legal provision and much less committed an unfair labour practice as alleged by the Union. The temporary vacancies in the attendants in the Bank have to be filled from amongst the candidates sponsored by the local Employment Exchanges and also the rules governing such employment in the Bank. Thiru M. Balachander will be continued to be considered for appointment as an attender on temporary basis as per rules of the Bank as and when vacancy arises. Hence the claim will have to be rejected.

4. Exs. W-1 to W-4 and M-1 to M-25 were marked by consent. No oral evidence was adduced on either side.

5. The points for determination are:

(1) Whether the Respondent Management is justified in terminating the services of the Thiru M. Balachander, and

(2) What relief the workman is entitled to.

6. Point No. 1—Admittedly in this case as can be seen from Exs. W-2 to W-4 and M-2, M-4, M-6 to M-25, the xerox copy of appointment orders that Thiru M. Balachander was appointed temporarily on leave vacancies. The learned authorised representative of the petitioner has also filed Ex. W-1 to show that the worker has worked for 297 days from December, 1985 to December, 1986 as per the certificate issued by the Respondent-Bank itself. The Respondent Bank also does not dispute the fact that the worker has worked as temporary attender for more than 240 days in a block of 12 months. Now the learned authorised representative contends on the admission that the worker having completed 240 days it is obligatory on the Respondent-Bank to terminate him only after complying with the conditions provided under Section 25-F of the Industrial Disputes Act. It is true Section 25-F provides pre-conditions for retrenchment of workman who has been in continuous service for not less than one year, namely, the workman should have been given one month's notice in writing indicating that reasons for retrenchment, the period of notice should have expired or has been paid in lieu of such notice, wages for the period of the notice,

should have been paid retrenchment compensation. It is not in dispute, the Respondent-Bank has not complied with the conditions mentioned in Section 25-F of the Industrial Disputes Act. But on the other hand, the learned authorised representative of the Respondent-Bank would contend that the appointment on temporary basis has been made for a specific period, the temporary employee automatically gets terminated on the expiry of the period and therefore the provisions of Section 25-F or any other provisions such as Section 25-G and 25-H of the Industrial Disputes Act much less have to be complied with. It is pointed out by him and a look at various appointment orders passed by the Bank on various dates would go to show that he has been appointed only for a specific period (namely days) and even the appointment order specifically mentions on the expiry of the period the temporary services stand automatically terminated and that the workman is not entitled to any right or privilege of a permanent employee under any circumstances during the period of this temporary appointment. A close look at the appointment order discloses it is only a one sided. However, the Authorised Representative would take shelter under Section 2(oo) (bb) of the Industrial Disputes Act and would contend that Section 2(oo) (bb) is an exception to Section 2(oo) of the Industrial Disputes Act. The definition of Section 2(oo) namely "retrenchment" says, it does not include,

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; x x x x

Thus it is seen the 'workman' falling under the category 2(oo) (bb) of the Industrial Disputes Act have been excluded from the purview of retrenchment defined under Section 2(oo) of the Industrial Disputes Act.

7. It is urged by the Authorised Representative of the Respondent-Bank that the category of 'workman' covered by Section 2(oo) (bb) can be terminated without offending Section 2(oo). In short, it is in his contention that the workman Thiru M. Balachander in this case has been appointed temporarily on contract of employment as per appointment orders and he had been terminated on the expiry of such contract on the basis of stipulation contained in the order itself. Thus he would urge the case of Thiru M. Balachander would directly come within the definition of Section 2(oo) (bb). It is further contended by the Authorised Representative of the Respondent-Bank that in as much as the termination of the workman in this case would not amount to retrenchment, the Respondent-Bank need not comply with the mandatory provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act. This argument of the Authorised Representative of the Respondent-Bank cannot be brushed aside as having no force in as much as the worker has been appointed for a specific period and that too subsequent to the coming into the force of the amended provision Section 2(oo) (bb) of the Industrial Disputes Act, 1947. Hence there is no merit in the contention of the Authorised Representative for the Petitioner-Union.

8. At this stage, I am obliged to point out that Section 2(oo) (bb) would defeat the very object of Section 2(oo) "retrenchment" and any employer by appointing temporarily any worker on a contract basis and terminate him on the expiry of the period and get over the provisions of Section 2(oo). Further, it is seen in this case that the worker has been appointed for a few days and thereupon he was not offered employment and subsequently he was appointed for a few days. Thus an unscrupulous employer can avail this provision 2(oo) (bb) and keep the employee (workman) under suspense. It should not be forgotten that the temporary workman or employee has no alternative except to accept the one sided conditions imposed in the appointment order or

the agreement as the case may be. It is high time that Section 2(o) (bb) requires reconsideration. However, the termination of the worker in this case is legally sustainable by virtue of the provisions under Section 2(o) (bb) of the Industrial Disputes Act, 1947. For these reasons, this point is found against the Petitioner.

9. POINT NO. 2: In the result, the action of the Management in terminating the services of one Thiru M. Balachander is justified. An award is passed accordingly. There will be no order as to costs.

Dated, this 31st day of October, 1989.

K. NATARAJAN, Industrial Tribunal
INDUSTRIAL TRIBUNAL
[No. L-12012/252/88-D.II(A)]

WITNESSES EXAMINED

For both sides: None.

DOCUMENTS MARKED

For Workman:

Ex. W-1/7-1-87 — Certificate showing the No. of days worked by Thiru M. Balachander as temporary Attender from December, 1985 to December, 1986.

Ex. W-2/20-1-86 — Appointment Order issued to Thiru M. Balachander, for the post of sub-staff on temporary basis. (xerox copy)

W-3/3-2-86 — do-

W-4/8-7-86 — do-

For Management:

Ex. M-1/20-1-86 — Appointment Order issued to Thiru M. Balachander, for the post of sub-staff on temporary Basis (xerox copy)

M-2/27-1-86 — Appointment Order issued to Thiru M. Balachander as temporary Attender for the period from 27-1-86 to 30-1-86 (xerox copy)

M-3/3-2-86 — do- 3.2.86 to 22.2.86 (xerox copy)

M-4/1-7-86 — do- 1.7.86 to 5.7.86 ..

M-5/8-7-86 — do- for the period 'nil' ..

M-6/14-7-86 — do- 14.7.86 to 19.7.86 ..

M-7/21-7-86 — do- 21.7.86 to 26.7.86 ..

Ex. M-8/28-7-86 — Appointment Order issued to Thiru M. Balachander as temporary Attender for the period from 28-7-86 to 31-7-86 (xerox copy).

M-9/1-8-86 — do- 1.8.86 to 2.8.86 ..

M-10/4-8-86 — do- 4.8.86 to 9.8.86 ..

M-11/11-8-86 — do- 11.8.86 to 14.8.86 ..

M-12/16-8-86 — do- 16-8-86 (one day) ..

M-13/18-8-86 — do- 18.8.86 to 23.8.86 ..

M-14/25-8-86 — do- 25.8.86 to 30.8.86 ..

M-15/1-9-86 — do- 1.9.86 to 6.9.86 ..

M-16/8-9-86 — do- 8.9.86 to 13.9.86 ..

M-17/16-9-86 — do- 16.9.86 to 20.9.86 ..

M-18/22-9-86 — do- 22.9.86 to 27.9.86 ..

M-19/29-9-86 — do- 29.9.86 to 30.9.86 ..

M-20/23-10-86 — do- for the period 'nil' ..

M-21/1-7-87 — do- 1.7.87 to 3.7.87 ..

M-22/3-7-87 — Relieving Order issued to Thiru M. Balachander. (xerox copy)

M-23/14-7-87 — Appointment Order issued to Thiru M. Balachander as temporary Attender for the Period of one day on 14-7-87 (xerox copy)

M-24/14-7-87 — Relieving Order issued to Thiru K. Balachander. (xerox copy)

M-25/26-9-87 — Appointment Order issued to Thiru M. Balachander, as temporary Attender for a period of one day.

K. NATARAJAN, Industrial Tribunal.

नई दिल्ली, 5 फरवरी, 1990

का. प्र. 475.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसूच में केन्द्रीय सरकार बैंक आफ इण्डिया के प्रबंधन के संबंध में निरीक्षण और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक क्रविकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की प्राप्ति हुआ था।

New Delhi, the 5th February, 1990

S.O. 475.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR
COURT, PANDU NAGAR, DEOKI PALACE, ROAD.

KANPUR

Industrial Dispute No. 184 of 1989

In the matter of dispute between :

Organising Secretary Bank of India Staff Union Mohini
Menslon Kishore Road Lucknow.

AND

Zonal Manager Bank of India Nawal Kishore Road,
Lucknow

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-12012/69/89-D.II (A) dated 19th August, 1989, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Bank of India in terminating the services of Shri Ashok Kumar Saxena is justified? If so, to what relief is the workman-entitled?

2. In the instant case despite sufficient opportunities afforded to the workman/Union to file written claim statement but nothing was done from the side of the Union/workman 4 p.m. none appeared from the side of the Union/workman nor there is any application from their side to adjourn the case. Thus it appears that the workman/Union is not interested in prosecuting the case. As such a no claim award is given in the case against the workman/Union.

3. Reference is decided accordingly.

ARJAN DEV, Presiding Officer
[No. L-12012/68/89-D.II (A)]

नई दिल्ली, 6. फरवरी, 1990

क्र. प्र. 476—औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में निम्नलिखितों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, नई दिल्ली के पंचपट को प्रकाशित करने के जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 6th February, 1990

S.O. 476.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Punjab National Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
NEW DELHI

I. D. No. 91/1987

In the matter of dispute between

Shri Suresh Chand, 362 Devendrapuri, Modinagar (U.P.)

Versus

The Regional Manager, Punjab National Bank, Regional
Office, E.K. Road, Meerut.

APPEARANCES

Shri Tara Chand—for the workman.

Shri A. K. Jha—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/98/I/86-D.IV (A) dated 2-9-1987 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Punjab National Bank in dismissing Shri Suresh Chand, Peon from service w.e.f. 21-9-84 is justified? If not, to what relief the workman is entitled?"

2. Some of the undisputed facts are that the workman was appointed as a peon in the services of the Punjab National Bank w.e.f. 26-12-1972. He was served with a charge sheet dated 17-6-1983 containing the following charges :—

"On 22-11-82, Smt. Raj Kali A/C holder of No. 18771 of BO Modi Nagar (who is your neighbour and whose account was opened with your introduction) gave your Rs. 600 to deposit the same in her account alongwith her Pass Book. You did not deposit the said money in her account but made a fictitious entry of Rs. 600 with the Bank and put your initials in the Pass Book.

You have, thus, cheated a customer of the bank, and have misused your official position and defrauded the bank. This act on your part tantamounts to gross misconduct in terms of Para 19.5(i) of the Bipartite settlement dated 19-10-66 making you liable for disciplinary action."

3. The workman submitted his reply dated 27-6-1983 which was considered by the disciplinary authority who found the same as unsatisfactory and ordered departmental enquiry vide order dated 21-9-1983 pursuant to which the enquiry commenced on 21-11-83 and concluded on 22-3-1984. The Enquiry Officer submitted her report dated 19-5-84 holding

that the charges against the workman were proved. The workman was served with show cause notice dated 31-7-79 vide which punishment of dismissal was proposed and the workman was also given personal hearing on 22-8-84 whereafter the disciplinary authority vide order dated 21-9-84 confirmed the proposed punishment of dismissal without notice. The workman preferred an appeal dated 6-11-1983 which was rejected by the appellate authority vide order dated 6-5-1985.

4. The workman has assailed the order of his dismissal and prayed for setting aside the same and reinstating him in service with continuity of service and with full back wages. He has challenged the fairness and justness of the enquiry mainly on the following grounds :—

1. That there was no legally admissible or substantive evidence in as much as the complainant namely Smt. Raj Kali has not been produced as a witness.
2. That opinion of the Handwriting Expert could not have been relied upon ;
3. That the enquiry was bad for the reason that the Presenting Officer examined himself as a witness ;
4. That the Enquiry Officer prevented the workman to produce the documents to on the record during the cross-examination of the Management witness ;
5. That the enquiry was bad for the reason of non-production of the Ledger Keeper ;
6. That the non-production of original Pass Book was bad ; and
7. That the documents were improperly exhibited by the Enquiry Officer."

5. The Management has submitted that the workman was charge sheeted for gross misconduct within the meaning of para 19.5(j) of the Bipartite Settlement and the enquiry was conducted in accordance with the provisions of the Bipartite Settlement and the principles of natural justice wherein the workman was afforded full opportunity to defend himself and present his case which in fact was availed of by him. Thus the enquiry was just and fair and the dismissal of the workman from service is legal and valid.

6. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the enquiry held by the Management is fair and proper ?
2. As in terms of reference.

7. I take up the various grounds on which the fairness and propriety of the enquiry has been challenged by the workman. Firstly it has been submitted that there was no legal admissible or substantive evidence as the complainant Smt. Raj Kali has not been produced as a witness. The Management witness at page 4 of the Enquiry Register had deposed that Smt. Raj Kali approached the bank on 18-1-1983 with her Pass Book and further that she submitted a written complaint on 20-1-83 duly typed and put her thumb impression before him. During the cross-examination at page 8 of the Enquiry Register, the Management witness categorically stated that he was basing allegation on the basis of the complaint and the personal talk with the complainant. The ld. representative for the workman has argued that the witness did not elaborate as to what personal talk was between him and the complainant. The ld. representative for the management has rightly submitted that there was no relationship between the witness and the complainant and as such the personal talk referred to in the deposition necessarily implied that the complainant personally talked about her complaint with the Manager and also gave him the typed complaint. Further it was for the representative of the workman to cross-examine the witness on this particular point. The very fact that there was no cross-examination on this point establishes the fact that the complainant made oral complaint as well during her personal talk with the witness and also gave him a written complaint. The ld. representative of the workman in support of his contention has relied upon the judgement of the Hon'ble Supreme Court in the case Central Bank of India Versus P. L. Jain

1969' II LJ 377; Khartha and Co. Ltd. Vs. its workman (1963-II LJ 452) and Union of India Vs. Sardar Bahadur (1972 Lab. IC-627). These authorities related to the peculiar facts of those very cases and are distinguishable and are not relevant to the facts of the present case. The deposition of the Management witness is legally admissible and substantive evidence and the same cannot be ignored. It is not necessary that the complainant must always be examined in every case. In the authority State of Haryana Vs. Rattan Singh (SC) Lab. judgement Vol. V page 168, it was held by the Hon'ble Supreme Court as under :

"It is well settled that in the domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hear-say evidence provided it has reasonable nexus and credibility."

In the above mentioned case, the services of a Conductor of the Haryana Roadways were terminated on the basis of evidence of an Inspector of the Flying Squad to whom passengers had made oral complaint, and the passengers who had made the complaint had not been examined. The Id. representative for the Management has also relied upon the judgment of the Hon'ble Supreme Court in the case J. D. Jain Versus Management of the State Bank of India (Supreme Court Lab. Judgments Vol. V page 1). In this case one Shri Kansal had made a complaint against an employee of the bank for having withdrawn amount in excess of authorised one and the complaint was proved by the Manager to whom oral complaint was made and Shri Kansal was not examined during the enquiry. On these facts the Hon'ble Supreme Court reiterated the case law laid down in State of Haryana Vs. Rattan Singh and held that the Tribunal had committed grave error in holding that the findings were based upon hear say evidence. Hence there is no merit in this ground taken by the workman.

8. With regard to the second ground that opinion of the hand writing expert could not have been relied upon as hand-writing expert had not been examined during the enquiry, it may be observed that the report of the Hand-writing expert was produced on the record on 12-12-1983 and at that time no objection whatsoever was taken by the defence representative, and in fact the defence representative had cross-examined the Management witness at length on the opinion of the handwriting expert. The hand-writing expert opinion was never disputed by the defence representative at any point of time during the course of enquiry, on the ground that it was inadmissible in the absence of the production of the handwriting expert himself. The very fact that the defence representative cross-examined the witness at length on the report of the hand-writing expert goes to show that any objection regarding the admissibility of the report of the hand writing expert without actually producing the hand-writing expert had been given up. As has been stated hereinabove, the strict rules of Indian Evidence Act are not applicable to the domestic enquiry and all material which is logically probative for prudent mind is permissible and admissible. The report of the handwriting expert is logically probative and as such the same has been rightly relied upon by the Enquiry Officer in support of her conclusion.

9. The next contention of the workman that the Presenting Officer had appeared as a witness and as such the Enquiry is vitiated is without any force. There is no rule of law or any principle of natural justice which stipulates that the presenting officer cannot be a witness or alternatively a witness cannot be a Presenting Officer. There is no violation of the principles of natural justice in case the Presenting Officer appears as a witness, and that too as a first witness, having been subjected to thorough cross-examination by the defence representative. The authority K. R. Nandan Vs. Fluid Power Pvt. Ltd., (1987 II CIL 269 Bombay) has got no bearing on the present case, because in that case the enquiry officer merely recorded the statement of the presenting officer and he was not called for cross-examination. The Management witness who had actually received the complaint from Smt. Raj Kali was a relevant witness and his evidence is legally admissible. The authority Motor Industries Co. Ltd., Vs. Sheikh Mohamed (1979 I LLL page 23 High Court adjudicature Karnataka) supports this contention of the Management in wherein it was held that there

is no principle of natural justice which requires that a person who has lodged a complaint cannot be a Presenting Officer and a Prosecutor in a domestic enquiry.

10. The next submission of the workman is that the enquiry is bad for the reason that enquiry officer prevented the opposite party from filing on the record documents used in the cross-examination. The said document in question is a letter dated 15-12-83 received from Smt. Raj Kali. At page 17 of the enquiry register the workman representative during cross-examination of the Management witness enquired as to whether the letter dated 15-12-1983 was received from Smt. Raj Kali. In reply the Management witness confirmed that the letter was received on 24-1-84 and was replied to vide letter dated 2-2-84. From this it is clear that the enquiry officer never prevented the use of the said document for the purpose of cross-examination. Further at page 20 of the Enquiry Register, the witness was asked as to what was the gist of the letter dated 15-12-1983 and in reply the witness deposed that it was the conciliation of the original complaint. The document was filed by the defence representative in the enquiry on the same day itself. Thus the submission of the Id. representative of the workman that it was not allowed to use the said document for cross-examination of the Management witness and to produce the same on the record does not appear to be correct.

11. The next contention raised by the workman is the non-production of the ledger-keeper in the domestic enquiry. The Management has produced in the domestic enquiry material and relevant witness namely the Manager to which the complaint had been made orally as well as in writing. It is only qualitative aspect of the evidence which has to be seen and not the quantitative aspect. The non-production of the ledger keeper in no way vitiated the enquiry. It was the prerogative of the Management to produce whatever witness it thought fit for proving the charges against the workman. If the workman felt it necessary, he could have examined the Ledger keeper in his defence.

12. The next contention of the Management is that the enquiry is vitiated on account of non-production of original pass book. It may be observed that the photo copy of the pass book was produced and exhibited on 12-12-83 at page 3 of the enquiry register and in respect of which the Management witness was thoroughly cross-examined by the defence representative. At no point of time during the course of the enquiry the exhibition of the photo copy of the pass book was objected to and at no point of time its genuineness was disputed, and further at no point of time any request for production of the original pass book was made. The judgment of the Hon'ble Supreme Court in case of Makhani Singh Vs. Narainpura Cooperative Agricultural Society Ltd., relied upon by the Id. representative of the workman has got no bearing on the facts and circumstances of the case. In the said case the opposite party had disputed photo copy and made allegations that the same was fabricated. In the present case the genuineness of the photo copy of the pass book exhibited on the record was never doubted and disputed and accordingly this contention of the workman has got no force.

13. The last contention of the workman is that the documents produced by the Management and proved by the Management witnesses were wrongly exhibited by the Enquiry Officer. This objection has got no force as the documents were produced on 12-12-83 and on the same day they were admitted without there being any objection to their exhibition and proof thereof by Management witness at any point of time.

14. The Id. representative of the workman has also challenged the findings of the Enquiry Officer for reasons that the Enquiry Officer committed error in rejecting letter dated 15-12-84 and also that the conclusions drawn by the Enquiry Officer in respect of entry of the pass book were wrong and further that enquiry officer committed error in using the word attempted before the word 'cheated' in her report dated 19-5-83. It could be recalled that Smt. Raj Kali made the verbal complaint on 20-1-1983 and also handed over a written complaint simultaneously to the Manager who appeared as a witness before the enquiry officer. It is only after a lapse of almost 11 months that the complainant Smt. Rajkali swore an affidavit on 15-12-83 which was produced by the workman in his defence. The very fact

that the said letter was sent almost after one year of the original complaint, rightly persuaded the enquiry officer to hold that it was a case of an alter thought. The conclusions drawn by the Enquiry Officer are probable and possible conclusions which would be drawn by any reasonable and prudent person and they are duly supported by the material on the record. The hand writing expert in his report has given categorical opinion that the entry in the pass book was in the hand writing of the workman. The opinion of the handwriting expert with which the enquiry officer agreed is in respect of the entire entry in the pass book. Even if it was assumed for the sake of argument that there was no opinion in respect of the figure '600' and the 'initials' against the entry in the pass book, the conclusions drawn by the enquiry officer that when the total and the date and the words had been written by the workman, the entire entry had been made by him is quite proper and just conclusion based upon the material on record. The other contention of the Id. representative for the workman is that the enquiry officer had used the words attempted before the word cheated. This objection is of no consequence. It has been established during the course of the enquiry that the workman had not deposited the sum of Rs. 600 given to him by Smt. Raj Kali and in respect thereof made a false entry in the pass book. These facts having been established which constitute misconduct within the meaning of para 19.5(J) of the Bipartite Settlement, the mere use of the word attempted would not change the complexion of the entire and the established facts and the proved misconduct on the record.

15. The record of the enquiry reveals that the workman was served a charge sheet dated 17-6-1983 and was given reasonable time to submit the reply which was filed by him on 27-6-1983. The enquiry was ordered in terms of the provisions of the Bipartite Settlement and the enquiry was conducted in accordance with the principles of natural justice. The workman was clearly informed of the charges against him. The witness of the Management was examined in the presence of the workman and representative and they were afforded opportunity to cross-examine him it was actually availed of by them. The workman was given opportunity to file documents in evidence and to file list of witnesses by the enquiry officer and in response thereof workman filed documents and then made a statement that they do not want to produce any other document or witness including the workman in his defence. On the request of the defence representative the copy of the arguments of the Presiding Officer was handed over to him whereafter he was given opportunity to file his argument within a week. Thus the enquiry was conducted in accordance with the provisions contained in para 19.12(a) of the Bipartite settlement and also the principles of natural justice were fully observed. The report of the Enquiry Officer cannot be regarded as perverse in any manner.

16. In view of the discussion made above, the enquiry held against the workman was fair and proper and the order of his dismissal passed by the Management is legal and valid and also fully justified because the banking industry is a customer oriented industry and any person who acts in the manner the workman did i.e. pocketing the money of customer and making false entry in the pass book in order to cheat the customer, and the bank has got no place in this industry. Hence the workman is not entitled to any relief. This reference stands disposed of accordingly.

G. S. KALRA, Presiding Officer

[No. L-12012/98/1/86-D. II (A)]

V. K. VENUGOPALAN, Desk Officer.

नई दिल्ली, 30 जनवरी, 1990

नं. प्र. 477.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इन्दौर के प्रबंधक के संबंध में निम्नलिखित निर्णयों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम व श्रम स्थानांतरण अधिनियम के प्रावधानों को प्रभावित करने के लिए, जो केन्द्रीय सरकार को 29 जनवरी, 1990 को प्राप्त हुआ था।

366 GI/90—5.

New Delhi, the 30th January, 1990

S.O. 477.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the following award of the Central Government Industrial Tribunal cum Labour Court Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on 29-1-90.

ANNEXURE

BEFORE SHRI ARJAN DEV. PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, KANPUR

Industrial Dispute No. 122 of 1986

In the matter of dispute between :

Shri Har Mangal Prasad,
State Assistant General Secretary,
UP Bank Employees Union,
36/1 Kailash Mandir,
Kanpur.

...Petitioner.

AND

The Manager,
State Bank of Indore,
Gumti No. 5,
Kanpur.

...Management.

AWARD

1. The Central Government, Ministry of Labour vide its notification No. L-12012/34/86-D.IV(A) dt. 12-11-86, has referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of state Bank of Indore in terminating the services of S/Shri Ashok Kumar Tiwari, Sushil Kumar Awasthi, Mohammad Alamgir Khan and Ram Nath Awasthi and not considering each of them for further employment while recruiting fresh hands under section 25H of the I.D. Act is justified? If not, to what relief the concerned workmen are entitled?"

2. The admitted facts are that Sh. Ashok Kumar Tewari and Sh. Ram Nath Awasthi workmen were appointed as peons in Gumti No. 5 Branch of the Bank, the former for the period from 5-3-84 to 18-5-84 and the latter for the period 27-8-84 to 9-11-84. The other two workmen, namely, Sh. Sushil Kumar Awasthi and Sh. Mohd. Alamgir Khan were appointed as temporary peons in the Birhana Road Branch of the Bank, the former for the period 21-1-84 to 4-4-84 and the latter, with breaks during the period 27-4-84 to 4-8-84 (total 75 days).

3. The case of the workmen is that in order to avoid appointments of permanent hands, the bank had started a practice of appointing temporary employees for doing duties of regular nature with the sole purpose of depriving them from benefits accruing under the various bank's awards and settlements. Each of them was appointed for a period of 75 days. There was no justification for their retrenchment when the bank is an expanding nationalised bank and has employed staff in the subordinate cadre even after termination of their services. They were not the junior most at the time of their termination of services. Even fresh hands were employed by the bank after termination of their services. While terminating their services they were given no notice or notice pay and any compensation by the bank. The bank thus violated the mandatory provisions of Sec. 25G, 25H of the I.D. Act and also provisions of paras 493, 495, 507, 516, 519, 522 and 524 of the 'Shastri' Award read with paras 20.7 and 20.8 of the First Bipartite Settlement. They have therefore, prayed that the management bank be directed to reinstate them with retrospective effect with full back wages and other consequential benefits.

3. The claim put up by the 4 persons is contested by the management. The management plead that S/Sh Ashok Kumar Tewari, Ram Nath Awasthi and Shri Sushil Kumar Awasthi were appointed for a specified period of 75 days while Mohd. Alamgir Khan was appointed temporarily during the periods 27-4-84 to 28-5-84, 8-6-84 to 23-6-84 and 9-7-84 to 4-8-84 total 75 days. Sh. Ashok Kumar Tewari was appointed against a temporary vacancy caused due to officiation of Sh. A. N. Srivastava a member of sub-staff in clerical cadre. He was also given a notice of termination on 18-5-84. Sh. Ram Nath Awasthi was appointed against temporary vacancy caused due to officiation of Sh. A. K. Awasthi a member of sub-staff in clerical cadre. He was also given notice of termination on 5-10-84. The services of other two workmen similarly stood terminated on the expiry of the period for which they were appointed. The management further plead that in view of amended section 2(oo)(bb) I.D. Act, the termination of the services of the 4 workmen cannot be termed as retrenchment. The management anyway violated 25G I.D. Act and 25H I.D. Act. These two sections when read with Rules 76, 77 and 78 of the I.D. Central (Rules), 1957, indicate that they are applicable only in case of workman who have actually worked for 240 days during the period of 12 calendar months preceding the date of their termination. The management further deny any violation of various awards and bipartite settlements.

4. Written orders of appointment were given to all of them except Sh. Mohd. Alam Gir Khan in whose case it could not be issued due to oversight.

5. In their rejoinder the workmen have alleged that Sec. 2(oo)(bb) I.D. Act, has no retrospective effect. They have further alleged that sections 25G and Sec. 25H I.D. Act are independent of Sec. 25F I.D. Act. Lastly they have alleged that they were duly selected for the jobs of peons and they performed the duties on regular basis. No other new facts have been alleged by them.

6. In support of their case the management filed the affidavit of Sh. Hemant Kumar Ambist and in support of their case workmen filed the affidavit of Shri Sushil Kumar Awasthi. The management also filed a number of documents. The workmen also relied on some of the documents summoned by them from the management.

7. The case of Shri Ram Nath Awasthi is distinguishable from the case of other 3 workmen. Ext. M-4 is an application dt. 22-8-84 made by him for his temporary appointment in the leave arrangement vacancies and Ext. M-5 is the copy of letter of appointment dt. 27-8-84 appointing him as a temporary peon from 27-8-84 for 75 days in all. His case is thus covered by section 2(oo)(bb) of the I.D. Act which came into force on 18-8-84. His appointment being for a specified period after 18-8-84, his termination would not amount to termination. Therefore, in his case, the provisions of sections 25 and 25H of the I.D. Act do not apply. Thus he has absolutely no case against the management.

8. Next I take up the case of the remaining 3 workmen. It is a settled position of law that sec. 2(oo)(bb) I.D. Act has no retrospective effect. Therefore, their cases are not covered by the said exception.

9. From the evidence it is clear that each of them had worked for 75 days. Sh. Ashok Kumar Tewari, Sh. Sushil Kumar Awasthi continuously and Sh. Mohd. Alamgir Khan with breaks as is given at page 15 of the written statement corroborated by the un rebutted evidence of the management witness.

10. Since none of them had worked for a continuous period of one year within the meaning of sec. 25H I.D. Act, the provisions of Sec. 25F I.D. Act are not attracted at all. Similarly the provisions of sec. 25H read with Rules 78 of I.D. Central Rules 1957 are not applicable in their case as the same also applies to cases where a workman have worked for not less than one year continuously

within the period of 12 calendar months preceding the date of the termination.

11. Sh. Sushil Kumar Awasthi, has admitted in his cross examination that when his services were terminated no person junior to him was working in the bank. Then in para 7 of his statement in cross examination he has expressed his ignorance on the point whether or not any person junior to other workmen was working at the time of termination of their services. In his examination-in-chief he has deposed that he was tendering his affidavit on behalf of U.P. Bank Employees Union and in para 5 of his statement in cross examination he has deposed that he was giving evidence in the case not only on his behalf but also on behalf of the other three workmen. Thus from the above evidence it becomes clear that the workmen have failed to prove that when their services were terminated junior hands were working. Hence even violation of sec. 25G I.D. Act, is not proved at all.

12. I may state here that from the evidence on record it appears to me that the bank had been more than fair to these workmen. Sh. Sushil Kumar Awasthi, the witness of the workmen, has admitted in his cross examination that for filling up regular vacancies in sub-staff cadre all of them were interviewed. According to him, he cannot tell whether they were or any of them were successful in the interview because the result was not declared by the bank. Here again the management side has been more fair to them. The management witness has admitted that except Sh. Ashok Kumar Tewari, the other 3 workmen were interviewed. He has referred to the letter dt. 23-5-85 which was sent by the management to the Assistant Employment Exchange Officer, Kanpur, informing him about those who had been selected. The copy of letter has been filed and from the said letter it appears that the names of none of these 4 workmen appear in that. Therefore, it could be safely inferred that they were not successful in the interview.

13. Hence, in view of the evidence discussed above and circumstances of the case, I hold that the action of the management against workmen named in the reference order and not considering them for further employment is justified? The workmen are entitled to no relief.

14. The reference is answered accordingly.

SJ]-

ARIJAN DEV, Presiding Officer

[No. I-12012/34/86-D.II(A)]

S. C. SHARMA, Desk Officer

नई दिल्ली, 30 जनवरी, 1990

का. घा. 478 - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वये में, केन्द्रीय सरकार, प्रैम्प्ट इस्टेबल कोलफील्ड्स लिमिटेड की छायापु-2 खाना के प्रत्यक्षता से सम्बद्ध नियोजकों और उनके के कामकाजों के सन्दर्भ में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम (च. 1), प्रावधान के अन्वये को प्रकाशित करने है।

New Delhi, the 30th January, 1990

S.O. 478.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. I), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Chapapur No. II Colliery of M/s. Eastern Coalfields Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 135 of 1989

PARTIES :

Employers in relation to the management of Chapapur-II Colliery of Messrs. Eastern Coalfields Limited.

AND

Their workmen.

APPEARANCES :

For the Employers : Shri R. S. Murthy, Advocate.

For the Workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 29th December, 1989

AWARD

By Order No. L-20012(67)/88-IR(Coal-I), dated, the 3rd November, 1989, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Chapapur-II Colliery of M/s. Eastern Coalfields Ltd. in accepting the age of Shri Ram Lochan Roy, Security Guard which was assessed at 55 years on 21-7-86 by the Age Determination Committee is justified? If not, to what relief is the workman entitled to?"

2. The management of Chapapur II Colliery of Messrs. Eastern Coalfields Limited has not filed any Written Statement. Nevertheless, Shri R. S. Murthy, Advocate, for the management submits that there was variation in age of the concerned workman as recorded in the registers of the management and so the concerned workman was sent to the AGE DETERMINATION COMMITTEE for determination of age. According to Shri Murthy, the Committee determined his age as 55 years on 21-7-86 after resorting to various tests, and accordingly, the age of the concerned workman was recorded as 55 years as on 21-7-1986. It is also the case of the management that since the age of superannuation is 60 years, the concerned workman will retire from service after he completes 60 years of age. In the circumstances, the management has prayed that its action in assessing the age of the concerned workman as 55 years as on 21-7-86 by Age Determination Committee be held to be justified.

3. The case of the sponsoring union, Bihar Colliery Kamgar Union, Dhanbad, as appearing from the Written statement submitted on behalf of the concerned workman, Sri Ram Lochan Roy, Security Guard, details apart, is as follows :—

The concerned workman was appointed as Security Guard on 1-1-75 at Chatkam Colliery. At the time of his appointment his date of birth was recorded in the Form 'B' Register of the Colliery as 1-7-46 on the basis of documents produced by him and also on the basis of medical examination done by the Colliery Management. He was transferred to Badjna Sub-Area on 18-7-75 and again was re-transferred to Chapapur II Colliery in December, 1976. He has been working in that colliery since then. At the time of transfer his service particulars including his age was recorded in L.P.C. As per L.P.C. his date of birth was 1-7-46. Even though his date of birth was recorded in the statutory record, still the management, with an ulterior motive to victimise, directed him to appear before the company's medical board and the Medical Board allegedly determined his age as 55 years on 1-11-86. The action of the management forcing him to appear before the Medical Board and changing of his birth in the statutory 'B' Form register on the basis of alleged Medical Report is illegal, arbitrary, unjustified and void. Seeing no other alternative, the union raised an industrial dispute before the A.L.C.(C), Dhanbad but the conciliation proceeding ended in failure due to the adamant attitude of the management. During the course of conciliation proceedings, the union called for statutory 'B' Form Register of Chapapur II Colliery and the L.P.C. received from Badjna Colliery. But the management did not produce those documents intentionally; the union produced photo copy of L.P.C. issued by the management of Badjna Colliery. The management, during

the conciliation proceedings, filed office order dated 1-9-86 whereby the age of the concerned workman alongwith other 90 persons by the alleged Medical Board was assessed. The Union challenged the report of the Medical Board and submitted before the Conciliation Officer that the office order did not indicate the reasons for coming to the conclusion regarding the age of the concerned workman. Anyway, the conciliation proceedings ended in failure and appropriate Government has been pleased to refer the dispute for adjudication by this Tribunal. Hence, the union has prayed that the action of the management in assessing the age of the concerned workman as determined by the committee be held to be illegal, arbitrary, unjustified and against the principle of natural justice.

4. Neither the management nor the sponsoring union has produced any documentary evidence nor have they examined any witness.

5. It is the firm case of the sponsoring union that the concerned workman was appointed as Security Guard of Chatkam Colliery on 1-1-75. Shri R. S. Murthy, Advocate for the management has not disputed this position.

It is also the case of the sponsoring union that at the time of appointment, the age of the concerned workman was recorded in Form 'B' Register of Chatkam Colliery as 1-7-46 on the basis of documents produced by him and also on the basis of Medical Examination done by the Colliery Management.

6. The sponsoring union has not called for Form 'B' Register of Chatkam Colliery nor has it produced any supportive document in respect of the age of the concerned workman. On the other hand, Shri R. S. Murthy submits that the age of the concerned workman was not recorded either in statutory 'B' Form register of that colliery or in the registers of the colliery where he was subsequently transferred to. This being the position, I am constrained to hold that sponsoring union has failed to prop up its case that the age of the concerned workman was recorded in 'B' Form register of Chatkam Colliery as 1-1-46.

7. It is also the case of the sponsoring union that age of the concerned workman was recorded in L.P.C. as 1-7-46 while he was transferred to Chapapur II Colliery. But this L.P.C. has not been produced before me nor has it been called for from the management. The written statement of the sponsoring union discloses that the photocopy of L.P.C. issued by the management of Badjna Colliery was produced before the conciliation officer. But this photocopy of L.P.C. has not been produced before me.

8. It appears that the concerned workman alongwith others were referred to "AGE DETERMINATION COMMITTEE" for determination of their age. It is contended by the sponsoring union that this reference to the age determination committee for determination of age is illegal. But I am unable to agree with this contention. If the age of any workman is not available from the record or if there exists variation of age in different record of the management, the only course left open for the management is to determine his age by Medical examination. The management has also taken recourse to this method. In my view, this action of the management is not only legal but also perfectly justified.

9. Then again the sponsoring union has submitted that the age as determined by the age determination committee is not proper and is violative of the principles of "Medical jurisprudence". But there is no evidence to support the fact that the age of the concerned workman as determined by the Age Determination Committee is irrational or violative of the principle of medical jurisprudence.

10. Accordingly, the following was rendered :—The action of the management of Chapapur II Colliery of Messrs. Eastern Coalfields Limited in accepting age of the concerned workman, Sri Ram Lochan Roy, Security Guard, which was assessed at 55 years on 21-7-86 by the Age Determination Committee is justified.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer
[No. L-20012/67/88/IR (C-I)]

नई दिल्ली, 2 फरवरी, 1990

MEMORANDUM OF SETTLEMENT

[See Rule 58 of I.D. Rules (c) 48]

का. आ. 479 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड का चांच विक्टोरिया एरिया सं. 12 के प्रबन्ध-संघ से सम्बद्ध नियोज्जकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), धनबाद के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 25-1-1990 को प्राप्त हुआ था।

New Delhi, the 2nd February, 1990

S.O. 479.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Chanch Victoria Area No. XII of M/s. BCCL and their workmen, which was received by the Central Government on the 25-1-1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d)

of the Industrial Disputes Act, 1947.

Reference No. 42 of 1989

PARTIES :

Employers in relation to the management of Chanch Victoria Area No. XII, P.O. Barakar, Dist. Burdwan.

AND

Their workmen

APPEARANCES :

For the Employers.—None.

For the Workmen.—Shri Samir Chatterjee, Area Asst. Secretary, Rashtriya Colliery Mazdoor Sangh.

STATE : West Bengal. INDUSTRY : Coal.
Dated, the 15th January, 1990

AWARD

The present reference arises out of Order No. L-20012/77/88-D-4(A)/I.R. (Coal-1), dated, the 13th April, 1989 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :—

"Whether the demand of Rashtriya Colliery Mazdoor Sangh for re-instatement of Shri Rabi Majhi, Rupai Majhi, Ratan Manjhi and Bejoy Majhi, Loaders is justified. If so, to what relief the workmen are entitled?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and made an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

Sd/-

S. K. MITRA, Presiding Officer
[No. L-20012/77/88-D.IV(A)/TR(C.D)]

PARTIES :

Representing management :

1. Sri P. K. Roy, PM, CV Area.
2. Sri UP Sinha, Dy. PM, CV Area.

Representing Workmen :

1. Sri Samir Chatterjee, RCMS.
2. Sri Rabi Manjhi, Expl. Carrier Basantimata.
3. Sri Bijoy Manjhi, Ug. Loader, Basantimata.
4. Sri Ratan Manjhi, Trammer, Basantimata.

SHORT RECITAL OF THE CASE

Sri Rabi Manjhi, Sri Bijoy Manjhi and Sri Ratan Manjhi of Basantimata Colliery were dismissed for habitual unauthorised absence and for absence from 25-3-1985 to 2-4-85, from 11-3-85 to 18-3-85 and from 11-10-84 to 7-11-84 respectively. Shri Samir Chatterjee raised I.D. at Conciliation in respect of all these workmen in one case and it ended in failure. It is yet not known whether it has been referred for adjudication or not. In the meantime, the matter has been discussed with the D(P) on 16-12-1988 and in pursuance of discussion in point no. 4 of the minutes, the case is settled as follows in view of GM's approval dated 18-2-1989.

Terms of Settlement

1. The workmen, in question, since they were absent for the period less than three months will be allowed to resume duty at Basantimata Colliery with immediate effect without any back wages.
2. The period of absence of workmen will be treated as leave without pay for the purpose of continuity of service.
3. The workmen agreed not to indulge in unauthorised absence in future.
4. The dispute is resolved for all practical purposes and the copy of this settlement will be sent to Ministry so that matter numbering 1/353/87-E2 may be settled and closed.

Signature of Management.

1. Illegible
2. Illegible

Signature of Workmen.

1. Illegible
2. Illegible
3. Illegible

Witnessess :

1. Illegible
2. Illegible

नई दिल्ली, 6 फरवरी, 1990

का. आ. 480 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स इंडियन आयरन एंड स्टील कंपनी लिमिटेड की चासनल्ला कोलियरी के प्रबन्ध-संघ से सम्बद्ध नियोज्जकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1), धनबाद के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 25-1-1990 को प्राप्त हुआ था।

New Delhi, the 6th February, 1990

S.O. 480.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Chasnalla Colliery of M/s. Indian Iron and Steel Company Ltd. and their workmen, which was received by the Central Government on the 25-1-1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 36A(1) of the
Industrial Disputes Act, 1947

Reference No. 74 of 1984

PARTIES :

Employers in relation to the management of Chasnalla
Colliery of M/s. Indian Iron and Steel Company
Limited, P.O. Chasnalla, (Dhanbad).

AND

Their Workmen.

APPEARANCES :

For the Employers : Shri R. S. Murthy, Advocate.
For the Workmen : Shri D. Mukherjee, Secretary, Bihar
Colliery Kamgar Union.

STATE : Bihar.

INDUSTRY : Coal.

AWARD

Dated, the 10th January, 1990

By Order No. L-20012(248)/84-D.III(A) dated, the 25th
September, 1984, the Central Government in the Ministry
of Labour, has, in exercise of the powers conferred by sub-
section (1) of section 36A of the Industrial Disputes Act,
1947, has referred the following dispute for adjudication to
this Tribunal :—

“Whether according to the Award dated the 27th May,
1982 of the Central Government Industrial Tribunal
No. 1, Dhanbad, in Reference No. 42 of 1981,
published in part II, section 3, sub-section (ii) of
the Gazette of India dated the 19th June, 1982 at
pp. 2354-2358, Shri Mastan is entitled to reinstatement
and placement in Excavation Category-B retroactively,
by the management of Chasnalla Colliery of Messrs. Indian
Iron and Steel Company Limited, Post Office Chasnalla,
District Dhanbad? If so, whether the action of the management
is justified, in not giving Shri Mastan the benefit of
the said Award and in subsequently dismissing him
from service from the 29th December, 1983? To
what relief, if any, is Shri Mastan entitled?”

2. The case of the management of Chasnalla Colliery of
M/s. Indian Iron and Steel Company Limited, as appearing
from the written statement submitted by it, details apart,
is as follows :

The present reference is bad in law and not maintainable
as the sponsoring union did not raise any dispute or issue
before the Asstt. Labour Commissioner (Central), Dhanbad
at any time for interpretation of the Award of this Tribunal
in Reference No. 42 of 1981 and the dismissal of the concerned
workman, namely, F. Mastan, was not an issue before
this Tribunal in Reference No. 42 of 1981. The substantive
case of the management is that the concerned workman was
employed as Drill Operator (Trainee) in EME Section of
Chasnalla Colliery. He was granted leave from 7-12-81 to
23-12-81. He, however, absented from duty after expiry
of leave without permission and without any satisfactory
cause for more than ten days which is a misconduct under
Clause 18(i)(n) of the certified Standing Orders of Chasnalla
Colliery. The chargesheet dated 12-3-82 was issued by the
management and sent to his available home address but no
reply was received from him. Subsequently, on 16-10-82 i.e.
after a lapse of more than ten months he came to Chasnalla
colliery and submitted a reply to the chargesheet along with
medical certificate. But before the reply to the chargesheet
could be considered by the management, he left Chasnalla
colliery and thereafter did not turn up at the colliery prior
to his dismissal from service with effect from 29-12-1983.
Anyway, the management found his reply to the chargesheet
unsatisfactory and decided to hold domestic enquiry. Sri Mohit
Mukherjee, Dy. Manager (Personnel) was appointed Enquiry

Officer to enquire into the charges levelled against him.
Later on communications were sent to all available address
of the concerned workman including his local address re-
garding holding of the domestic enquiry. But the communi-
cations were returned undelivered with the remarks of the
postal Department “left India—returned to the sender”. The
notice of enquiry was published in the local daily newspaper
‘Awaz’ on 3-4-1983. In spite of all efforts of the manage-
ment, the concerned workman did not turn up before the
Enquiry Officer nor did he send any information
about his inability to attend the enquiry. As
a consequence the domestic enquiry against him
was held ex-parte. The management produced evidence
in support of the charges against him in the said domestic
enquiry and on the basis of enquiry held by him and the
evidence produced before him, the Enquiry Officer held the
concerned workman guilty of the charges levelled against
him. The report of the Enquiry Officer was considered by
the Manager of the colliery and the Asstt. General Manager/
Chief Mining Engineer and he approved of the dismissal of
the concerned workman from service. Accordingly, the con-
cerned workman was dismissed from service by an order
dated 29-12-83 with immediate effect. In the context of facts
and circumstances the management submits that the domestic
enquiry held ex-parte is perfectly justified and the action
taken by the management in dismissing the concerned work-
man from service is also justified. The concerned workman
is not entitled to any relief whatsoever.

The concerned workman is not entitled to any benefits
under the Award passed by this Tribunal on 27-5-82 in
Reference No. 42/81. He was daily rated Category IV work-
man and was appointed as Drill Operator Trainee; he was
never appointed as Drill Operator. The Award of this Tri-
bunal in Reference No. 42/81 was on 27-5-82 when the
concerned workman was absenting from duty in an unautho-
rised manner as aforesaid. In terms of the Award of this
Tribunal the workmen concerned in Reference No. 42/81
were entitled to Technical Grade D i.e. Excavation Grade B
with retrospective effect from the date of their appointment
to the post of Dumper Operator/Dozer Operator/Pay Loader
and Drill Operator. The concerned workman was not ap-
pointed to the post of Drill Operator at any time and there-
fore the question of his being entitled to any benefit under
the said Award did not and could not arise. In view of
this position, the Award of this Tribunal in Reference No.
42/81 is to be interpreted to mean that the concerned work-
man is not entitled to Excavation Category B. He is not
also entitled to be reinstated in service or placed in Excava-
tion Category-B. As a result he is not entitled to any benefits
under the Award referred to above and the action of the
management in dismissing him from service with effect from
29-12-83 is also justified.

3. The case of the sponsoring union, Bihar Colliery Kam-
gar Union, as appearing from the written statement submit-
ted on behalf of the concerned workman, briefly stated, is
as follows :

The concerned workman was a permanent employee of
Chasnalla Colliery and had been working as Drill Operator
in EME Section of the colliery since 4-9-79 with unblemished
record of service. The members of Bihar Colliery Kamgar
Union raised an industrial dispute concerning the workmen
of EME Section demanding Grade-B with retrospective effect.
The dispute was referred by the appropriate Government for
adjudication by Central Government Industrial Tribunal No.
1 and was registered as Reference No. 42/81. The Tribunal
was pleased to pass an Award in favour of the workmen
figuring in that reference including the concerned workman.
The management implemented the Award after entering into
conciliation settlement with the sponsoring union. The con-
cerned workman was granted leave from 7-12-81 to 23-12-81.
He could not report for duty after expiry of sanctioned
leave owing to his illness and prayed for extension of leave
supported by medical certificate. The management, however,
did not give any reply to his letter rejecting his prayer for
extension of leave. After recovery from illness he reported
for duty with medical certificate but he was not allowed to
resume his duty. He and his union represented before the
management several times for allowing him to resume duty
but without any effect. Seeing anti-labour attitude of the man-

agement, the union raised an industrial dispute on 20-9-83 before the Asstt. Labour Commissioner (Central), Dhanbad. The aforesaid dispute was withdrawn on 20-10-83 on the assurance given by the management to settle the issue amicably. But the anti-labour management, instead of settling the dispute amicably as per its assurance given before the Conciliation Officer, issued a dismissal letter dated 29-12-83 which was received by the concerned workman on 3-1-84. In view of the naked anti-labour attitude of the management the union again raised an industrial dispute and the conciliation proceeding ended in failure due to the adamant attitude of the management. The Government of India has been pleased to refer the dispute for adjudication by this Tribunal. As per Award in Reference No. 42/81 all the concerned workmen in that industrial dispute including the concerned workman were entitled to Grade-B with retrospective effect. The Award was implemented in pursuance of the conciliation settlement dated 16-11-82. In conciliation settlement the issue of deployment of the concerned 47 workmen gainfully was discussed and settled. The action of the management in not implementing the Award and dismissing the concerned workman from service is illegal, arbitrary, unjustified and against the provisions of the Award and conciliation settlement. The management dismissed the concerned workman on the basis of ex-parte enquiry without affording him any opportunity. The enquiry proceeding is invalid, improper and based on extraneous consideration. The dismissal of the concerned workman from service is illegal, arbitrary and against the principles of natural justice and smacks of anti-labour policy adopted by the management.

4. In rejoinder to the written statement of the sponsoring union, the management has admitted that the concerned workman was a permanent employee of Chasnalla Colliery but denied that he had at any time worked as Drill Operator in EME Section of the colliery from 4-9-79 or from any other date. The management has also admitted that the concerned workman was one of the concerned workmen in Reference No. 42/81 but he is not entitled to any relief or benefit under the Award as he was never appointed as Drill Operator. In regard to the implementation of the Award by the management and the conciliation settlement reached by the management with the sponsoring union, the management has taken the position that it is a matter of record and anything contrary to such record is denied. The management has further denied that the concerned workman was ill and the so called medical certificate purported to have been sent by him was not sent along with his application. The medical certificate did not bear his L.T.I. or signature. It is manifest that he adopted this Modus Operandi with a view to keep his job intact while he was abroad and apparently took up employment there. He himself did not apply for extension of leave. Therefore, the question of sending him any reply did not arise. It is admitted that the sponsoring union raised an industrial dispute by its letter dated 20-9-83 before the Asstt. Labour Commissioner (Central), Dhanbad. But by this letter the union demanded for reinstatement of the concerned workman and no dispute regarding interpretation of the Award of this Tribunal in Reference No. 42/81 was raised. It has been denied that either under the Award or under conciliation settlement the concerned workman is entitled to any benefit. The management has reiterated that the domestic enquiry was fair and proper and strongly denied the allegation that it adopted anti-labour policy.

5. In rejoinder to the written statement of the management, the sponsoring union has asserted that over-stayal beyond sanctioned leave is not a misconduct under the provisions of certified Standing Orders. The concerned workman reported for duty along with medical certificate, but the management did not allow him to resume his duty. It has been alleged that the management was pre-determined to dismiss the concerned workman from service and Sri Mohit Mukherjee, Dy. Manager (Personnel), who held domestic enquiry was biased and prejudiced against the members of Bihar Colliery Kamgar Union including the concerned workman. The endorsement of the postal Department on the alleged letters "left India—return to the sender" is written and manufactured by the management for the purpose of the present case. It is alleged that the Enquiry Officer was biased and held the ex-parte enquiry with a pre-determined aim to dismiss the concerned workman from service. It is further alleged

ed that the General Manager was not the Chief Mining Engineer of Chasnalla Colliery at the relevant time and so the concerned workman was dismissed from service by an unauthorised person. The Central Government Industrial Tribunal No. 1, Dhanbad, in Reference No. 42/81 passed an Award in favour of the concerned workman along with others directing the management to pay them Excavation Grade-B with effect from the date of their appointment in Excavation Section.

6. At the instance of both the parties arrayed, it was considered as to whether the domestic enquiry was held properly and fairly as a preliminary issue. At the time of hearing the preliminary issue the management examined the Enquiry Officer Sri Mohit Mukherjee as MW-1 and laid in evidence a mass of documents which were marked Exts. M-1 to M-17. On the other hand, the sponsoring union examined the concerned workman F. Mastan as WW-1, but did not adduce documentary evidence.

Upon consideration of evidence on record it was held by order dated 20-10-89 that the domestic enquiry was held fairly and properly although it was held ex-parte.

7. At the time of hearing on merits the parties did not adduce any further evidence and relied upon their respective pleadings and evidence already on record.

8. The schedule of terms of reference comprises of two parts. The first part of the schedule of reference runs as follows:

"Whether according to the Award dated 27-5-82 of the Central Government Industrial Tribunal No. 1, Dhanbad, in Reference No. 42 of 1981, published in Part II, Section 3, sub-section (ii) of the Gazette of India dated 19-6-82 at pp. 2354-2358, Shri Mastan is entitled to reinstatement and placement in Excavation Category-B retrospectively, by the management of Chasnalla Colliery of M/s. Indian Iron and Steel Company Limited, P.O. Chasnalla, Distt. Dhanbad?"

And the Second part runs as follows:

"If so, whether the action of the management is justified in not giving Shri Mastan the benefit of the said Award and in subsequently dismissing him from service from the 29th December, 1983? To what relief, if any, is Shri Mastan entitled?"

9. The sponsoring union in its written statement has stated that F. Mastan was a permanent employee of Chasnalla Colliery and had been working as Drill Operator in EME Section of the colliery since 4-9-79 with unblemished record of service. It is the further case of the union that Bihar Colliery Kamgar Union raised an industrial dispute concerning the workmen of EME Section demanding grade with retrospective effect and that the dispute was referred to the Central Government Industrial Tribunal No. 1, Dhanbad, for adjudication. It has been submitted by the union that the dispute was registered as Reference No. 42/81 and the Presiding Officer was pleased to pass an Award in favour of the workmen including F. Mastan and that the management implemented the award after entering into a conciliation settlement with the sponsoring union. The management has admitted the position that F. Mastan was a permanent employee of Chasnalla Colliery but denied that he had at any time worked as Drill Operator in EME Section from 4-9-79 or from any other date. The management has further submitted in its written statement that although Mastan was one of the concerned workman in Reference No. 42/81 he is not entitled to any relief or benefit under the Award as he was never appointed as Drill Operator. The management has submitted that implementation of the Award by the management has submitted that implementation of the Award by the management and the conciliation settlement with the sponsoring union is a matter of record.

In the context, the contention of the parties it is necessary to consider the Award of this Tribunal and the conciliation settlement.

10. The management has filed the Award of this Tribunal dated 27-5-82 (Ext. M-15). It appears that an industrial dispute was raised by the Secretary, Bihar Colliery Kamgar Union, Dhanbad, and the appropriate Government was pleased to refer the dispute for adjudication before this Tribunal on the following terms:

"Whether the demand of the workmen of Chasnalla Colliery of M/s. HISCO Ltd. P.O. Chasnalla, Distt. Dhanbad that the 47 workmen (mentioned) in Annexure should be placed in 'Tech. Grade 'B' with retrospective effect is justified? If so, to what relief are the concerned workmen entitled?"

It also appears that the name of the concerned workman appears at serial No. 44 with designation 'Drill Operator' with effect from 23-6-79 in the Annexure to the schedule of the reference.

Upon consideration of evidence on record, Mr. Justice B. K. Ray (Retd.), Presiding Officer of this Tribunal was pleased to hold in his award that the concerned workmen were entitled to Technical Grade 'B' with retrospective effect from the date of their appointment to the post of Dumper Operator/Dozer Operator/Pay Loaders and Drill Operators. In view of the award of this Tribunal there is evidently no scope to hold that the concerned workman was not entitled to the benefit of the Award as he was only a Drill Operator (Trainee).

11. Anyway, it appears that the matter did not rest by the Award of the Tribunal. The dispute lingered on and ultimately both the management and the sponsoring union resolved the dispute by an amicably settlement, in the form of a memorandum of settlement dated 10-11-82 (Ext. M-14). An extract of the relevant portion of the memorandum of settlement is gleaned herein below:

"(1) The concerned 47 employees involved in the case under Ref. No. 42/81 will be placed in Excavation Category 'B' of NCWA-II and not in Technical Grade 'B' as awarded by the Tribunal. This will be restricted only to 47 employees involved in the Award and it will also be their personal grade. They will be placed in Excavation Category 'B' from the dates as mentioned in the Award.

(2) That, it is agreed that workers under reference will undertake training in different type of machineries for gainful employment and effective utilisation. For their training, necessary arrangements will be made by the Management and union will extend all co-operation;

(3) It is agreed that after successful completion of training, the concerned 47 employees will be re-designated as Multi Skilled Operators like Dumper/Dozer/Shovel/Pay Loader/Drill Operator depending upon their suitability and will be operating various types of machineries of sizes and capacities as per norms laid down by IBCCI, specified for such Excavation Category as and when required by the Management;

(4) It is agreed that settlement will resolve/settle all disputes in regard to implementation of the Award in Ref. No. 42/81.

(5) It is also agreed that all future promotions will be guided by the Management's Promotion Policy as framed from time to time;

Thus, it is evidenced that in terms of the memorandum of settlement, the concerned workman along with others were entitled to be placed in Excavation Grade-B of NCWA-II and that they would be placed in Excavation Category 'B' from the date as mentioned in the Award. Hence, the concerned workman is entitled to be placed in Excavation Category 'B' of NCWA-II with effect from 23-6-79 and that he along with others was to undertake training in different types of machineries for gainful employment and effective utilisation. In the circumstances, the inescapable conclusion is reached that as per the term of memorandum of settlement which is a sequel to the award of this Tribunal, the concerned workman is entitled to Excavation Grade-B of NCWA-II with effect from 23-6-79. Hence, there is no scope for disputing the position that the concerned workman is entitled to Excavation Grade-B of NCWA-II on the plea that he was

under training. In the circumstances, I am constrained to hold that the concerned workman is entitled to be placed in Excavation Category-B retrospectively as from the date mentioned earlier in terms of memorandum of settlement dated 10-11-82.

12. Sri R. S. Murthy, Advocate, for the management has contended that the concerned workman is not entitled to be placed in Excavation Category-B as he was dismissed from service with effect from 29-12-83. I am afraid that this contention of Sri Murthy is very difficult to accept. As I have already pointed out that in terms of memorandum of settlement the concerned workman is entitled to Excavation Category-B retrospectively with effect from 27-6-79. This being so, the concerned workman is entitled to be placed in Excavation Category-B with effect from 27-6-79 till he was dismissed from service from 29-12-83, even if it is conceded for the sake of argument that the order of the management dismissing him from service is in order.

13. Then again the sponsoring union has hotly disputed the action of the management and its propriety in dismissing the concerned workman from service with effect from 29th December, 1983. The controversy over the matter is required to be considered in-depth in order to ascertain whether the action of the management in dismissing the concerned workman from service is justified or not.

14. Admittedly, F. Mastan, the concerned workman, was a permanent employee of Chasnalla Colliery and he was on sanctioned leave from 7-12-81 to 23-12-81. There is no dispute that he did not join his duty after expiry of sanctioned leave and this led to his dismissal from service by the management with effect from 29-12-83 after a domestic enquiry was held ex-parte on his failure to present himself in that enquiry.

15. The concerned workman was arraigned on a charge as the chargesheet dated 12-3-82 discloses, under clause 18(i)(n) of the certified Standing Orders of the colliery for not having reported for duty from 24-12-81 till the date of issuance of charge in spite of repeated reminders. The certified Standing Orders of the colliery (Ext. M-12) envisages disciplinary action for misconduct under clause 18 of the said order and clause 18(i)(n) envisages that continuous absence without permission and without satisfactory cause for more than ten days is a misconduct. But the concerned workman did not remain initially absent without permission and without satisfactory cause for more than ten days. As I have stated above he was on sanctioned leave from 7-12-81 to 23-12-81 and thereafter he remained absent. For this kind of absence there is a specific provision in the certified Standing Orders in Clause 10(f) which runs as follows:—

"If a workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose lien of his appointment unless he—

- (a) returns within ten days of expiry of his leave, and
- (b) explains to the satisfaction of the manager his inability to return on the expiry of his leave."

In case, the worker loses his lien on the appointment, he shall be entitled to be kept on the 'Badli List'. Clause: 10(h) envisages that not withstanding anything mentioned above, any workman who overstays his sanctioned leave or remains absent without reasonable cause will render himself liable for disciplinary action. Thus, it is obvious that specific provision has been engrafted on the certified Standing Orders providing for dealing with cases of overstayals. But the management arraigned him on a charge as if he remained initially absent from his duty continuously without permission and without satisfactory cause for more than ten days. This charge against the concerned workman, on the face of it, is not sustainable and consequently his dismissal from service on the basis of charge as framed by the management must be set aside.

16. On the facts as well the charge also has not been proved by hard and sombre evidence. The chargesheet discloses that the concerned workman failed to resume his duty on 24-12-81 till the date of issuance of chargesheet in spite of repeated reminders. But the management has not produced any bit of evidence to indicate that the concerned workman was directed to report for duty in time, far less, repeatedly,

17. In reply to the chargesheet the concerned workman by letter dated 16-10-82 stated as follows :

"The Manager,
North Mine,
Indian Iron & Steel Co. Ltd.,
Chasnalla.

Dt. 16-10-1982.

Respected Sir,

I have received your charge sheet No. 5/N/170 dated 12-3-1982 today.

In this connection please permit me to write a few lines for your kind and sympathetic consideration. Sir, this is a fact that I had been granted leave from 7-12-1981 to 23-12-1981 and have to resume my duty on 24-12-1981. But unfortunately I fell on sick and I had sent several telegrams to you in this respect (10 Nos. receipts of telegrams are enclosed herewith). I could not send medical certificate due to distance and distress. Due to accute pain in my chest and fever I could not move to another place and taken complete rest upto 3-10-82 and advised by my doctor. After certifying my doctor for resuming my duty I came to Chasnalla for joining with medical fitness (medical certificate enclosed).

I was advised to report to Dy. Medical Supdt. or join my duty vide letter No. 5/N/523 dated 20-9-1982 by Shri S. N. Choudhary, Manager, North Mine, Chasnalla. But extremely sorry to say that I am running from pillar to post after 13-10-82 to join my duty and there is no fault of mine.

Sir please permit to join my duty. Your approval in this respect will be very much appreciated.

Thanking you,

Yours faithfully,

Sd./- F. Mastana,
P. No. 5474

Drill Operator Trainee,
E.M.E. Chasnalla."

Encls : as above.

Thus, from his reply it is evident that he fell ill and sent telegrams to the management in this respect and that due to acute pain in the chest and accompanying fever he could not move and took complete rest upto 3-10-82 as advised by the doctor. MW-1 Mohit Mukherjee the Enquiry Officer admitted in cross-examination that the department received two telegrams from him on 22-6-82 and 23-8-82 praying for extension of leave on the ground of sickness, and that the management by letter dated 20-9-82 directed him to report to Dy. Medical Supdt., Chasnalla colliery for better treatment or else to report for duty within seven days from the date of receipt of that letter and that in reply the concerned workman submitted his letter dated 16-10-82 reporting for duty along with medical certificate and ten receipts of telegrams and that on 16-10-82 he was not allowed to resume his duty. The Enquiry Officer further stated that medical certificate produced by the concerned workman was referred to Senior Medical Officer, Chasnalla and the Medical Officer found him fit for resuming duty on 13-10-82 and that it appears that he submitted his medical certificate earlier to his reply dated 16-10-82. It remains incomprehensible as to why the concerned workman was not allowed to resume his duty although he was found fit by the Medical Officer to resume duty and he was willing also to resume duty. In reply to the chargesheet he has stated that he was advised to report to Dy. Medical Supdt. or to join his duty but, to quote his own language, "I am running from pillar to post after 13-10-82 to join my duty and there is no fault of mine." He prayed that he may be permitted to join his duty.

18. Anyway, it appears that having failed in his bid to resume duty the concerned workman left Chasnalla, and the management decided to hold domestic enquiry to enquire into the charges levelled against him. It appears that notices of enquiry were sent to him at his local address and native place. But all those were returned un-delivered by the postal authorities. In one of such un-delivered registered letters there is an endorsement as follows:—

"Left India—return to sender."

But there is no signature of the postal peon who purported to have made that endorsement. The management has not made any attempt to prove this endorsement either by examining the postal peon or by adducing any cogent evidence. In one of the telegram receipts (Ext. M-7) the address of the concerned workman was given as 'Muscat, Sultanate of Oman'. Then again this address has been written by the postal authority. It has not been proved as to who wrote this portion of address and on whose instruction. Relying on this tell-tale evidence the Enquiry Officer came to sweeping conclusion that the concerned workman went abroad and was not ill. Then again, the Enquiry Officer disbelieved the genuineness of the medical certificate issued by two different doctors. Dr. J. M. Chandrasekaran, M.B.B.S. by certificate dated 4-10-82 was certifying that the concerned workman was suffering from Bilateral Pulmonary Tuberculosis since November, 1981 (Ext. M-13/1). He recommended leave for the concerned workman from 22-11-81 to 1-12-82 and from 1-1-82 to 8-10-82. The Enquiry Officer has found fault that the recommendation of the doctor for leave of the concerned workman and pointed the discrepancy in the date. The doctor might have given dates erroneously. But that does not rule out the fact that the concerned workman was suffering from serious illness. Dr. Chandrasekaran is not an ordinary doctor; he is Medical Officer, Panchayat Union Dispensary, Rampakkam. He is an M.B.B.S. having a registered number. On the certificate issued the Medical Officer of the colliery made endorsement that he examined the concerned workman on 3-10-82 and found him fit to join his duty. The Medical Officer of the colliery did not appear to have any suspicion about the ailment of the concerned workman as diagnosed by the Dr. Chandrasekaran. The concerned workman produced another certificate of his illness from Dr. S. Balasubramaniam, M.D., Assistant Surgeon, Central Hospital, Pondicherry dated 3-1-83. This medical certificate was produced in the domestic enquiry but has not been produced before this Tribunal. In this certificate Dr. Balasubramaniam certified that the concerned workman was suffering from Activated Peptic Ulcer with Gastro-intestinal bleeding since 24-10-82. The Enquiry Officer has disbelieved this certificate presumably on the ground that the diagnosis of the ailment of the concerned workman as appearing from this certificate is at variance with that of the certificate issued by Dr. Chandrasekaran (Ext. M-13/1). But it is really very difficult to accept the logic since the concerned workman was earlier suffering from Bilateral Pulmonary Tuberculosis he could not be suffering from Activated Peptic Ulcer with Gastro-intestinal bleeding. In my view, the Enquiry Officer was not justified in disbelieving the medical certificate produced by the concerned workman.

19. Thus, from the evidence on record it appears that the concerned workman reported for duty with medical certificate, but the management did not allow him to resume his duty. The reason of his absence from duty is his protracted illness. Thus, it is evidenced that the concerned workman did not remain absent from duty on any frivolous ground but on the ground of his ailment of serious nature. In the circumstances, the management should have given him an opportunity to join his duty which it did not. That apart, the charge against him as not been properly framed. So, the management was not justified in dismissing him from service for the alleged misconduct. Hence, the order of dismissal from service has clattered down on the concerned workman by the management is set aside and the concerned workman is directed to be reinstated in service with full back wages from the date of this reference and the period of his absence from duty from 24-12-81 till the date of reference shall be treated as leave without pay.

20. Accordingly, the following award is rendered—In terms of the award dated 27-5-1982 of the Central Government Industrial Tribunal No. 1, Dhanbad, in Reference No. 42 of 1981 and the memorandum of settlement dated 10-11-82 the concerned workman is entitled to be placed in Excavation Category-B with effect from 27-6-1979. It is also held that the action of the management in not giving him benefit of Excavation Category-B and dismissing him from service subsequently from 29-12-1983 is not justified. The management is directed to reinstate him in service within one month from the date of award after giving him notice to resume his duty and to pay him back wages with effect from the date of

reference i.e. 25-9-1984. He should be given continuity of service and his absence from duty from 24-12-81 till the date of reference shall be treated as leave without pay.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer
[No. L-20012/248/84-D.III(A)/IR (Coal-I)]
K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 31 जनवरी, 1990

का. भा. 481.-केन्द्रीय सरकार, खान अधिनियम, 1952 (1952 का 35) की धारा 83 की उपधारा (2) के अनुसरण में, प्रादेशिक खान निरीक्षक (जो खान सुरक्षा निदेशक के रूप में भी पद-निहित है) को प्राधिकृत करते हैं कि वह विवृत कोयला खनिज निगम (इट लिमिटेड) को कोयला खान विनियम, 1957 के विनियम 194(1) और (2) के उपबंधों से तब छूट दे जब तक कि यह राय है कि उक्त खान में परिस्थितियाँ ऐसी हैं कि उनके कारण उर्वरक उपबंध का अनुपालन अनिवार्य या अत्यवश्यक हो जाता है, जो इस शर्त के अधीन होंगे कि इस प्रकार नियुक्त किए गए व्यक्ति के पास धातुवाहक खान विनियम, 1961 के अधीन समतुल्य प्रशिक्षण है।

[का. सं. एम.-29013/11/89-आई एस एच II]
आर. टी. पांडेय, उप सचिव

New Delhi, the 31st January, 1990

S.O. 481.—In pursuance of the sub-section (2) of section 83 of the Mines Act, 1952 (35 of 1952), the Central Government hereby authorises the Regional Inspector of Mines (also designated as Director of Mines Safety) to exempt any opencast coal mine working lignite deposits from the provisions of Regulation 194 (1) & (2) of the Coal Mines Regulations, 1957, if he is of the opinion that the conditions in the said mine are such as to render compliance with the above provision unnecessary or impracticable, subject to the condition that the person so appointed possesses equivalent qualification under the Metalliferous Mines Regulations, 1961.

[F.No. S-29013/11/89-JSH. II]
R. T. PANDEY, Dy. Secy.

नई दिल्ली, 31 जनवरी, 1990

का. भा. 482.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व भारतीय खाद्य निगम, पटना के प्रवर्तक से संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2, धानबाद के पंचपद को प्रकाशित करते हैं, जो केन्द्रीय सरकार को 30-1-90 को प्राप्त हुआ था।

New Delhi, the 31st January, 1990

S.O. 482.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Food Corporation of India, Patna and their workmen, which was received by the Central Government on 30-1-90.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO 2) AT DHANBAD

Reference No. 17 of 1989

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.
366 GI/90-6.

PARTIES :

Employers in relation to the management of Food Corporation of India, Patna and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri Vijayendra Kumar, State Joint Secretary, FCI, Executive Staff Union, Patna.

On behalf of the employers.—Shri A. K. Verma, District Manager.

STATE : Bihar.

INDUSTRY : Food.

Dated, Dhanbad, the 18th January, 1990

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. I-42018/ (15)/88-D4B dated the 19th September, 1989.

SCHEDULE

"Whether the action of the Management of Food Corporation of India, Patna in striking off the name of Sri Anil Kumar from the Attendance Register of Sugar Centre Bihta w.e.f. 1-10-86 and not forwarding his name for regularisation in terms of Head Quarters Circular No. F-P-1(4)/85/Vol.II dated 6-5-87, is legal and justified? If not, to what relief the workman concerned is entitled?"

The case of the workmen of the union is that the concerned workman Shri Anil Kumar was employed by the management on 1-4-85 as casual employee (Water-carrier-cum-Messenger) at Sugar Centre, Bihta of Food Corporation of India (hereinafter referred to as FCI) within the district of Patna. His employment was made under the orders of the District Manager, FCI Patna who was the competent authority to make appointment of Class IV staff. Although the concerned workman was employed as casual but he was discharging the duties of regular employee of FCI. He had worked for more than 240 days continuously from 1-4-85 within 12 calendar months. He remained in the employment of the management with effect from 1-4-85 to 30-9-87. He was stopped from attending his job with effect from 1-10-87 by the verbal order of the Asstt. Depot Supdt., Bihta. According to the case of the management the concerned workman was in continuous service from 1-4-85 to 30-9-86 and it is stated that the concerned workman himself left the job from 1-10-86. The concerned workman was paid his wages from 1-4-85 to 30-9-86 but his wages from October, 1986 to December, 1986 has not been paid to him though the bill for the same was already submitted by the Asstt. Depot Supdt., Sugar Centre Bihta to the District Manager, FCI Patna. It was not paid in spite of repeated requests made by the workmen and his union.

The concerned workman had attended his duty from January, 1987 to December, 1987 regularly but neither he was paid wages for the said period nor his wage bill for the said period was forwarded by the Asstt. Depot Supdt., Sugar Centre Bihta to the District Manager, FCI Patna. The concerned workman and his union requested for payment of the wages from October, 1986 to September, 1987 but the same was not paid. The concerned workman was not allowed to put his signature in the Attendance Register from 1-4-85 to 30-9-87 and his attendance was marked by the Asstt. Depot Supdt. himself. The concerned workman was therefore not aware as to whether his attendance was being marked regularly by the Asstt. Depot Supdt., Bihta from 1-4-87 to 30-9-87. The management used to pay the wages of the concerned workman for 6 to 8 months at a time and as such he was under the impression that his attendance was being marked by the Asstt. Depot Supdt. as usual. During April, 1987 it was informed by the workmen that there was apprehension that his work will be stopped as the present Asstt. Depot Supdt. Shri Viswanath Pd. was thinking for the engagement of his son by, striking

the name of the concerned workman from the roll and as such the wage bill of the concerned workman from January, 1987 onwards was not being submitted to the District Manager. Thereafter a letter dated 13-4-87 was given by the union to the District Manager, FCI Patna regarding apprehended victimisation by adopting unfair labour practice with a copy to the ALC(C) Patna and Asstt. Depot Suptt. Sugar Centre Bihta but no action was taken by the FCI management.

In the month of October, 1987 it came to the knowledge of the union that the name of the concerned workman was already struck off/removed from the Attendance Register with effect from 1-1-87 although the concerned workman attended his duty regularly till 30-9-87 and the engagement of the son of Shri Viswanath Pdl., Asstt. Depot Suptt. was shown during the said period. The District Manager as well as the Depot Suptt. verbally instructed the concerned workman that he need not come to the office from 1-10-87 as his services were not required. The name of the concerned workman was arbitrarily struck off from the Attendance Register with intent to engage some other person in his place and to avoid the regularisation of the concerned workman by adopting unfair labour practice. No notice or notice pay and retrenchment compensation was paid to the concerned workman at the time of retrenchment. The appropriate Govt. was also not intimated about his retrenchment by the management. The action of the management in retrenching the concerned workman is illegal and void under Section 25F of the I.D. Act. The workman is therefore entitled for his reinstatement with full back wages in the time scale of FCI along with regularisation after completion of 240 days service in the light of head quarters circular dated 6-5-87. The regularisation of all the casual employees was under consideration by the headquarters and for that the name of casual employees were called for by the District Manager vide his letter dated 19-12-86. The Asstt. Depot Suptt. vide his letter dated 29-12-86 forwarded the name of the concerned workman Shri Anil Kumar for regularisation. The management decided to accept all casual employees against the entry level of Cat. III and IV notwithstanding by relaxing age limit if they have possessed educational qualification and had completed 90 days service on or before 2-5-86. In the light of the above circular a telegram was issued by the District Manager, FCI Patna on 3-7-87 directing the Asstt. Depot Suptt. Sugar Centre Bihta to submit bio data of the casual employees working under him. The Asstt. Depot Suptt. Sugar Centre Bihta forwarded bio data along with copies of certificate of educational qualification and birth of the concerned workman only on 7-7-87 recommending for his regularisation appointment. In view of the circular dated 6-5-87, 65 casual employees have already been regularised and they have been appointed in the time scale of FCI as watchmen. The case of the concerned workman has been distinguished. The management had taken a false plea during consultation proceeding that since the concerned workman has himself left the job on 1-10-86 as such no notice and compensation was given to him. As the concerned workman has continuously worked for more than 240 days in a year he has got status of a permanent employee and is entitled for reinstatement with full back wages and other consequential benefits besides regularisation as per his qualification of the corporation. It is prayed that the Award be passed in favour of the concerned workman holding the action of the management in retrenching him by striking his name from roll without observing the precondition as provided under Section 25F of the I.D. Act and denying regularisation in the light of headquarters circular dated 6-5-87 are illegal and unjustified and that the concerned workman is entitled to reinstatement with back wages and other consequential benefits.

The case of the management is that the concerned workman was an employee on seasonal basis to carry and supply drinking water for the use of the management depot at Bihta during summer for which sanction was made by the District Manager, FCI Patna. There is no provision for water carrier in the Staff regularisation, 1971. The concerned workman was engaged as a daily rated worker. Normally

sanction is given for the period from 1st April to 30th September of the year. Accordingly he was engaged for the first time on the basis of the sanction from 1-4-85 and his services would have ended on 30-9-85 but on special ground being for his engagement a further sanction was given for his engagement from 1st October to 31st December, 1985. The next engagement of the concerned workman as water carrier was from 1st January, 1986 to March, 1986 on special plea for his engagement recommended by the depot incharge followed by another engagement from 1st April, 1986 to 30th September, 1986. There was no sanction for further engagement from 1st October, 1986 onwards in respect of which the concerned workman claimed his claim. The concerned workman has been paid for the period for his work on the sanctioned engagement. According to the terms of the employment he was engaged on "no work no pay basis". He was not paid for the Sunday holidays and on those days he did not work. His actual attendance was marked in the Attendance Register maintained in the depot.

His attendance during the year 1985 from 1-4-85 to 31st December, 1985 was 204 days and so the concerned workman cannot be said to have completed 240 days in the calendar year of 1985 so as to attract the provision of Section 25F of the I.D. Act, 1947. Further from January, 1986 to September, 1986 the concerned workman completed 217 days of Attendance which falls short of the required attendance upto 240 days in a calendar year to attract the provision of Section 25F of the I.D. Act. The concerned workman could not be said to be even a casual labour in order to be put in the category of a "Workman" as defined in the I.D. Act. In fact his engagement was like of contract engagement on payment under certain rate for the work performed by him and not as a regular employee of FCI in order to get the benefits ordinarily allowed to the regular employees of the FCI.

The management had to sanction engagement of a Water Carrier for the summer season because drinking water supply for the staff at the FCI Depot at Bihta was inadequate during summer season. The District Manager of FCI was competent to sanction temporary engagement of Water carrier whenever there was shortage of water supply in the godown within his jurisdiction. The depot incharge of Bihta was Shri R. T. Singh at whose instance the sanction of water carrier at Bihta godown was made and the engagement of the concerned workman with effect from 1-4-85 was made by him. It was at his instance that further sanction till the end of year 1985 was made till the other sanctions were made at his instance and the concerned workman was allowed by him to function as water carrier. The Attendance Register will show the Attendance of the concerned workman from 1st October, 1986 to 29th December, 1986 but that was without any sanction from the District Manager. Shri R. T. Singh happens to be the father-in-law of the concerned workman and apparently the appointment on the sanctioned post of the concerned workman was made by him with ulterior motive. Shri R. T. Singh made over charge of the office at Godown Incharge, Bihta on 29-12-86 and the attendance of the concerned workman was also marked only till 29-12-86 instead of till 31-12-86. This shows that the marking of the Attendance was in order to justify the continuation of the service of the concerned workman only till Shri R. T. Singh was godown incharge at Bihta. Shri R. T. Singh had not taken any sanction and wrongfully marked the attendance of the concerned workman from October, 1986 to 29-12-86. The concerned workman did not work or attend the office after 30-9-86. Shri R. T. Singh had not submitted the bill of the concerned workman for the month of October, 1986. He submitted one bill for November and December, 1986 to the District Manager for sanction and payment. It was disallowed as no sanction for the post was made by the District Manager. All this will show that the concerned workman had not worked after 30-9-86 as Water Carrier in the management's godown at Bihta. Shri R. T. Singh had no occasion to sign on the bill of December, 1986 as he had made over charge on 29-12-86 and it was the business of the successor to sign the bill for December, 1986 on the completion of the month. Shri R. T. Singh in order to favour the concerned workman resorted to dishonest practice.

Neither the concerned workman nor his union had raised any demand with the management concerning the demand covered by this reference. On the above facts it is prayed that the claim of the concerned workman for regularisation and other benefits including non payment of wages after 30th of September, 1986 is not justified and reference be decided in favour of the management.

The points for decision in this case are :

- (1) Whether there was relationship of employer and employee between the management and the concerned workman?
- (2) Whether the concerned workman was retrenched from service without complying with the provision of Section 25F of the I.D. Act?
- (3) Whether the name of the concerned workman was struck off from the Attendance Register of Sugar Centre Bihta with effect from 1-10-86?
- (4) Whether the concerned workman is entitled to regularisation in his service in terms of Headquarters circular dated 6-5-87?

The management and the workman each examined one witness in support of their respective case. The documents of the management are marked Ext. M-1 to M-14 and the documents of the workman are marked Ext. W-1 to W-12.

Point No. 1

Admittedly the concerned workman Shri Anil Kumar was employed by the management as Water carrier-cum-messenger from 1-4-85 to 30-9-86 and for that period the concerned workman was paid his wages. There is dispute between the parties whether the concerned workman had continued the job from 1-10-86 to 30-9-87. The case of the management is that the concerned workman was engaged as Water carrier and his engagement was seasonal. It is also submitted on behalf of the management that the concerned workman was not a "workman" within the meaning of Section 2(s) of the I.D. Act. So far the engagement of the concerned workman at the Sugar Centre Bihta as Water carrier from 1-4-85 to 30-9-86 is concerned the same was sanctioned by the competent authority and is accepted. Now turning to the evidence in the case it will appear from Ext. W-1 dated 16-5-88 which is the comment filed by the District Manager, FCI, Patna to the ALC(C), Patna that Shri Anil Kumar was employed at Sugar Centre, Bihta on 1-4-85 as per direction of the competent authority as Water carrier-cum-Messenger on daily wage basis who worked till 30-9-86. It is clear from this document that the concerned workman had worked as Water carrier-cum-messenger on daily wage basis from 1-4-85 to 30-9-86. In para 3 of the same exhibit it is stated by the District Manager that the casual labour Shri Anil Kumar had left depot at his own on 1-10-85. It is further stated that that regarding forwarding the name of the concerned workman to the higher authority for regularisation was nothing else but carrying on the order of the higher authority and that it was the direction of the head of office to forward the names of the casual labourers whose names were on the rolls as on 30-4-86 and accordingly the name of the concerned workman was forwarded. Ext. W-3 is a letter dated 19-12-86 written by the Chief Labour Inspector for the District Manager, Patna to the depot Incharge, FCI Food Storage Depot, Bihta and other depots regarding submission of casual labour list. It will appear from Ext. W-3 that the Regional Office Patna vide its letter dated 17-10-86 has desired the information about the casual/daily rated temporary employees and not about casual labourers. It further explains that casual employees including Water carrier, messenger etc. who are working in the office of the depot. A request was made to send the information in respect of the casual employees as desired by the Regional Office. Thus it is clear from the letter Ext. W-3 that casual employees include Water carrier, messenger etc. and that as the concerned workman was working as Water carrier-cum-messenger, he was a casual employee and information was sought in respect of him and others working as Water carrier, messenger etc. Ext. W-4 dated 19-12-86 is in compliance with Ext. W-3 by the Asstt. Depot Suptd., Sugar Centre, Bihta regarding District Manager, Patna's letter

dated 19-12-86. It appears from Ext. W-4 that information was submitted in respect of the concerned workman Anil Kumar only who was a casual employee in the Sugar Centre, Bihta. Para 2 shows the engagement of the concerned workman as Water carrier/casual labour/messenger engaged in the office of the depot. Ext. W-5 dated 7-7-87 is the bill to pay of the bill regarding date of birth and educational qualification in respect of the concerned workman Shri Anil Kumar casual employee of Sugar Centre, Bihta by the then Asstt. Depot Suptd., Sugar Centre, Bihta. Ext. M-4 is the original letter dated 7-7-87. The Asstt. Depot Suptd., Sugar Centre, Bihta vide Ext. W-5 recommended for the regularisation/appointment of the concerned workman as per his qualification. Ext. M-1 is the Attendance Register maintained at the Sugar Centre, Bihta by the Asstt. Depot Suptd. in respect of the casual labour (Water carrier). This Attendance Register has been produced by the management and admittedly it was maintained by the Asstt. Depot Suptd. of FCI Sugar Centre, Bihta. The designation of the concerned workman has been shown at some places as Water carrier and at some places as casual labour. Ext. M-14 dated 21-3-85 is a sanction order to show that the District Manager had sanctioned the engagement of one Water carrier at Sugar Centre, Bihta with effect from April, 1985 to September, 1985. It is admitted by the management in the W.S. that the engagement of the concerned workman as Water carrier from 1-4-85 to 30-9-86 was under the sanction of the competent authority, namely, the District Manager. The wage bills Ext. M-2 and M-11 is in respect of the concerned workman who was working as water carrier. In some of the bills it is stated that the bill is of casual labour in FCI Sugar Centre, Bihta and the said bill is in respect of Shri Anil Kumar. The said bills were passed and the amount was received under the signature of the concerned workman Shri Anil Kumar. Ext. M-3 is forwarding letter of casual labour bill for November and December, 1986. The evidence discussed above will show that the concerned workman working as water carrier-cum-messenger was a casual employee of the Sugar Centre of FCI at Bihta and that there was relationship of employer and employee between the management of FCI and the concerned workman and that the concerned workman was "Workman" under Section 2(s) of the I.D. Act.

Point Nos. 2 and 3

The two points are taken up together for the sake of convenience of discussion as they are inter connected.

Admittedly the concerned workman had worked as Water Carrier from 1-4-85 to 30-9-86. The management has tried to explain that the concerned workman had not completed attendance of 240 days in a year during his engagement at Sugar Centre of FCI Bihta in view of his W.S. The management has arrived at a wrong conclusion as they have tried to bifurcate the attendance of the concerned workman by separately calculating the attendance for the year 1985 and then separately calculating the days of his attendance in the year 1986. In order to understand continuous service we have to refer to Section 25B of the I.D. Act which defines continuous service. Section 25B in clause (1) says that a workman shall be said to be in continuous service for a period if he is for that period in uninterrupted service including service which may be interrupted on account of sickness or authorised leave etc. Clause (2) shows that where a workman is not in continuous service within the meaning of clause (1) for a period of one year or 6 months, he shall be deemed to be in continuous service under employer for a period of one year, if the workman, during a period of 12 calendar months, preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) 190 days in the case of a workman employed below ground in a mine and (ii) 240 days in any other case. Thus according to Section 25B of the I.D. Act continuous service is to be calculated during the period of 12 calendar months preceding the date with reference to which calculation has to be made and not that the calculation has to be made for each year separately. Thus the calculation has to be made taking 30-9-86 as the date after which according to the management the concerned workman had not worked. Thus going back from 30-9-86 one year will be 1st of October, 1985. The management has filed the original attendance register Ext. M-1 and also its

photo copy Ext. M-12. On perusal of the Attendance of the concerned workman from October, 1985 to September, 1986 it will appear that the concerned workman had attendance of 2/3 days which did not include the attendance on Sundays holidays although the same also has to be calculated for purpose of accounting the attendance in 12 calendar months. It is clear that the concerned workman had clear attendance of 273 days in the 12 calendar months preceding the date from which his attendance was not marked. I hold therefore that the concerned workman had attendance of more than 240 days in 12 calendar months prior to his absence/non marking of his attendance.

I have held above that the concerned workman had worked as a casual employee in the Sugar Centre of FCI at Bihta and had completed attendance of more than 240 days in one year i.e. within 12 calendar months preceding the date of stoppage of his work.

Section 25F of the I.D. Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until (a) the workman has been given one month's notice in writing indicating the reason for retrenchment or the workman has been paid in lieu of such notice, wages for the period of notice, (b) the workman has been paid, at the time of retrenchment, compensation equivalent of 15 days average pay for every completed year of continuous service or any part thereof in excess of six months and (c) notice in the prescribed manner is served on the appropriate Government WW-1 is the Joint Secretary of FCI Executive Staff Union, Patna who had raised the industrial dispute on behalf of the concerned workman. He has stated that the concerned workman was not issued with any notice or paid any notice pay or compensation nor had the management issued intimation to the Government regarding termination of the services of the concerned workman. The said evidence has not been controverted and it is an admitted fact that the concerned workman had not been given one month's notice in writing indicating the reasons for retrenchment nor he was paid wages for one month in lieu of the notice nor he was paid compensation at the time of retrenchment equivalent to 15 days average pay for every completed year of continuous service or part thereof in excess of 6 months. It is also admitted that no notice in the prescribed manner was served on the appropriate Government as required under clause (c) of Section 25F of the I.D. Act.

I hold, therefore, that there has been no compliance of the conditions as laid down under Section 25F of the I.D. Act prior to the retrenchment of the service of the concerned workman.

The case of the management is that the concerned workman was not retrenched by the management but the concerned workman had himself left his service from 1-10-86. No oral evidence has been adduced to show that the concerned workman had left the service on 1-10-86. The question therefore is whether the non-marking of the attendance of the concerned workman by the management with effect from 1-10-86 would amount to retrenchment. Retrenchment is defined under Section 2(oo) of the I.D. Act. It will appear that the concerned workman had not been stopped from service as a punishment inflicted by way of disciplinary action. There was no question of voluntary retirement of the concerned workman. He had not reach the age of retirement. Nor his services were terminated on the ground of continued ill health. The case of the concerned workman is not covered even under clause (bb) of Section 2(co) of the I.D. Act as his services were not terminated as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein. In fact there was no contract of service in writing between the management and the concerned workman. He was temporarily employed as Water-carrier-cum-Messenger as is apparent from the management case, and his attendance was not marked from 1-10-85. On perusal of the Attendance register Ext. M-1 It will appear that his work had not been stopped from 1-10-86 and that he was attending his duties and his attendance was marked for the month of October, November and December, 1986 and thereafter his

attendance was not marked. The Attendance Register Ext. M-1 shows that the attendance of the concerned workman was marked for the month of October, November and December by the Asstt. Depot Supdt., FCI Sugar Centre, Bihta and that the said Asstt. Depot Supdt. had submitted the bills for the payment of the wages of the concerned workman for the month of October, November and December 1986 so far the bill of November and December, 1986 is concerned the same is marked Ext. M-3. It appears that the bill for the month of October, has not been filed in this case. As the attendance of the concerned workman was marked for the month of October also I think the Asstt. Depot Supdt. must have submitted the bill for October, 1986 as well but the same is not on the record. However, it will appear from Ext. M-3 that even the District Manager, FCI Patna had passed bill for payment for the month of November and December, 1986 but subsequently the said amount was not paid with a note in red ink on the bill "Not for payment". It is submitted on behalf of the management that as the District Manager had not sanctioned for the further extension of the services of the concerned workman for the month of October, November and December, 1986 the payment of wages for the month of November and December were withheld. Admittedly no sanction has been filed for the engagement of the concerned workman for the month of October, November and December, 1986 but it appears that the concerned workman was attending his duties of the office in those months and as such it cannot be said that the concerned workman had left the services of his own. It is a different matter that the wages for the month of October to December, 1986 even after being passed was not paid on account of non sanction of the engagement of the concerned workman but the fact remains that the concerned workman was attending his duties at the Sugar Centre, Bihta and in this view of the matter it cannot be said that the concerned workman had left the services of his own from 1-10-86. Admittedly the management did not give any order in writing either refusing work or informing the concerned workman that his name has been struck off the rolls as he has left the services himself. In the circumstances it is clear that the management had wrongly treated that the concerned workman had left the services of his own and the non-payment of the wages after the month of September, 1986 virtually means striking off the name of the concerned workman amounting to termination of his services. In my opinion such termination is retrenchment within the meaning of Section 2(oo) of the I.D. Act violating the mandatory provision in Section 25F of the I.D. Act and such termination of services is invalid. While reading Section 25F 25B and Section 2(oo) of the I.D. Act his Lordship Krishna Iyer, J. in *State Bank of India vrs. N. Sundara Money*, (AIR 1976 SC 1111) has observed that the words 'for any reason whatsoever' occurring in Section 2(oo) are very wide and almost admitted of no exception. It was made clear that a comprehensive definition has to be effected to protect the weak against the strong in construing the ambit of the words contained in Section 2(oo). Pithily, he observed that "without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25F, he cannot be retrenched without payment, at the time of retrenchment compensation computed as prescribed therein read with Section 25-B(2) of the I.D. Act.

In view of the discussions made above I hold that the concerned workman was retrenched from service without complying with the provision of Section 25F of the I.D. Act. I further hold that the name of the concerned workman was struck off from the Attendance Register of Sugar Centre Bihta with effect from 1-10-86 by the higher management of FCI.

Point No. 4

Besides the fact that the concerned workman was retrenched without complying with the provision of Section 25F of the I.D. Act which alone could entitle the concerned workman for his reinstatement from the date of the termination of his services, there is a circular of the management dated 6-5-87. The said circular dated 6-5-87 is marked Ext. W-2 in the case. This is a confidential circular issued by the Personnel Manager of FCI, Headquarters, New Delhi

to Zonal Manager, Sr. Regional Manager/Regional Manager/Joint Manager Port operation) FCI regarding recruitment of casual/daily rated employees regularisation thereof. Para 4 of Ext. W-2 is the operative portion of the circular and it is stated that "in view of the above decision of the Board of Directors, it has been decided to relax the ban on recruitment for filling in entry level category III and IV posts by considering full time casual/daily rated employees who had been performing duties of regular employees of the corporation under FCI (Staff) Regulations, 1971 and who have completed 3 months period of service as on 2-5-1986 and possess requisite qualification etc. The casual employees who do not fulfil conditions of appointment for any entry level Category III and IV posts shall be retrenched by paying retrenchment compensation as required under the provision of I.D. Act. The age limit may however, be relaxed by the competent authority as specified in Appendix I and II of the FCI (Staff) Regulations to the extent of service rendered by such casual employees in the corporation on daily rated/casual basis. This decision shall not apply for part time casual employees and casual labour/workers and they shall not be regularised in accordance with the said circular. The District Manager vide the letter dated Ext. M-5 dated 18-7-87, in response to post copy of telegram dated 2-7-87, submitted the information in the statement to the Senior Regional Manager, FCI Patna regarding casual employees. From the 1st enclosed to Ext. M-5 it will appear that the name of the concerned workman Anil Kumar is at Sl. No. 6 which shows that he was engaged at Sugar Centre, Bihra from 1-4-85 and had completed 3 months period of service as on 2-5-86. From this list as well it will appear that the concerned workman was a casual employee and that his name along with others was forwarded for being regularised in response to the circular Ext. W-2. The circular Ext. W-2 envisaged of regularising the casual employees who had completed 3 months period on 2-5-86. Ext. M-5 shows that the concerned workman as casual employee had already completed 2 months period of service on 2-5-86 and as such the concerned workman was entitled to the benefit of the circular Ext. W-2 for his regularisation in the post of Water Carrier-cum-Messenger. WW-1 has stated that 3 persons junior to the concerned workman were appointed as Watchman who were previously working as casual employees and Ext. W-8 is the office order by which they were appointed as Watchman. Ext. W-8 dated 22-8-87 shows that the three casual employees on being selected for absorption in FCI were appointed in the post of Watchmen with effect from 19-7-87. This evidence of WW-1 had not been controverted by the management. On perusal of the list enclosed with Ext. M-5 it will appear that S/Shri Vijay Kumar, Indradeo Rai and Shukdeo Prasad who were selected vide Ext. W-8 were working as casual employees in FCI since before the concerned workman Anil Kumar started working in the Sugar Centre. It is thus clear that the three persons selected in Ext. W-8 were not junior to the concerned workman. However true fact remains in favour of the concerned workman. Firstly the services of the concerned workman was terminated without compliance of the conditions of retrenchment as provided under Section 25F of the I.D. Act and secondly that the concerned workman is entitled to the benefit of the circular Ext. W-2 in as much as he had completed more than 3 months of service as casual employee prior to 2-5-86. The concerned workman therefore is also entitled to regularisation in his service in terms of the headquarters circular dated 6-5-87.

In the result, I hold that the termination of the services of the concerned workman being retrenchment within the meaning of Section 2(oo), termination without compliance with the provisions of Section 25F renders the termination void *ab initio* and inoperative. The concerned workman shall be deemed to be in service and be entitled to the arrears of wages. There is no question of granting reinstatement because there is no cessation of service. A mere declaration that the concerned workman continues to be in service with all consequential benefit if enough. The concerned workman therefore is entitled to continue in service with all benefits from 1-10-86. The management is directed to allow the concerned workman to resume his duties at once and regularise him in Class IV service and should pay the arrears of his salary from 1-10-86 in the time scale of FCI within

3 months from the date of publication of the Award in the Gazette of India.

This is my Award.

Dated : 18-1-1990.

I. N. SINHA, Presiding Officer

[No. L-42018/15/88-D.II(B)/IR(C-II)]

नई दिल्ली, 1 फरवरी, 1990

का. घा. 483 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रिय सरकार व भूमन ईस्टर्न कोलफील्ड्स लिम. का सतग्राम कोलियरी के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुषंग में निम्नलिखित औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रिय सरकार को 29-1-90 को प्राप्त हुआ था।

New Delhi, the 1st February, 1990

S.O. 483.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Satgram Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 29-1-90.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

AT CALCUTTA

Reference No. 78 of 1986

PARTIES :

Employers in relation to the management of Satgram Colliery of M/s Eastern Coalfields Limited.

AND

Their workmen

APPEARANCES :

On behalf of employer—None.

On behalf of workmen—None.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012/29/83-D.IV(B), dated 11th November, 1986, the Government of India, Ministry of Labour referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Satgram Colliery of M/s. Eastern Coalfields Limited, P.O. Devchand Nagar, Distt. Burdwan is justified in dismissing Shri Santoo Roy, Mason Mazdoor w.e.f. 10-4-1982 ? If not, to what relief the workman concerned is entitled ?"

2. When the case is called out today, none appears from either side inspite of the receipt of the registered notice issued on 28-11-1989. It appears from the record that on previous occasions also the Union did not appear in the circumstances it appears that the parties are not interested to proceed with the present reference. Such being the position, there is no other alternative but to pass a "No Dispute Award" and accordingly I do so.

This is my Award.

Dated, Calcutta,

The 16th January, 1990.

SUKUMAR CHAKRAVARTY, Presiding Officer

[No. L-19012/29/83-D.IV.B/IR(C-II)]

नई दिल्ली, 5 फरवरी, 1990

का. अ. 484 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अन्वये में, केन्द्रीय सरकार व भारतीय खाद्य निगम, नई दिल्ली के प्रत्यक्ष में संबद्ध निर्वाहकों और उनके कर्मचारियों के बीच, अनुवाद में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, नई दिल्ली के पंचायत को प्रकटित करने है, जो केन्द्रीय सरकार को 1-2-90 को प्राप्त हुआ था।

New Delhi, the 5th February, 1990

S.O. 484.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Food Corporation of India, Jaipur and their workmen, which was received by the Central Government on 1-2-90.

ANNEXURE

BEFORE SHRI G. S. KALRA : PRESIDING OFFICER :

CENTRAL GOVT. INDUSTRIAL TRIBUNAL :
NEW DELHI
I.D. No 1/88

In the matter of dispute between :
Shri K. L. Sharma C/o Dr. P. P. Sharma,
4/33-A, Jail Road, Civil Lines,
Aligarh (U.P.).

Versus

The Regional Manager,
Food Corporation of India,
Jaipur.

APPEARANCES :

Shri D. V. Ram Chandra with workman.
Shri K. K. Jaiswal—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. 1-42012/19/71-DIRB/(Pt.) dated 22nd December, 1987 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Food Corporation of India, Jaipur in terminating Shri K. L. Sharma Ex-quality Inspector, Jaipur from service with effect from 4-11-68 is legal and justified? If not, to what relief is he entitled to?"

2. Some of the undisputed facts are that the workman Shri K. L. Sharma was appointed as Quality Inspector in the FCI w.e.f. 13-12-65 in the scale Rs. 225-550. Initially he was placed on probation for a period of one year from the date of his appointment. By an order dated 5-1-67 the period of probation of the workman was extended for a period of one year w.e.f. 13-12-65. However, later on by an order dated 20-1-67 the extended period of probation was curtailed to six months i.e. 12-6-67 in terms of regulation 4.19(3) contained in FCI Office Manual Vol I. The workman was discharged from service with immediate effect vide order dated 4-11-68. No notice was served upon the workman nor any wages in lieu of notice were paid nor any retrenchment compensation was paid. The discharge from service was also not as a consequence of any charge sheet or enquiry against the workman.

3. The workman has assailed the order of his termination on the grounds that the order of termination was against the statutory rules in as much as the order dated 5-1-67 extending the probation period upto 12-12-67 was against the statute according to which probation could be extended only for a period of six months, that the subsequent reduction of the probation period vide order dated 20-1-67 was also against the statute because extension for six months is permitted but reduction for six months is against the law and is not permitted, that on completion of extended period of probation the workman stood automatically confirmed w.e.f.

13-6-67 and his service could not have been terminated in terms of regulation 4.19(3) after the completion of the probationary period of 11-1/2 years and he could be removed by adopting the proceeding laid down under article 311 of the constitution. But in his case the principles of natural justice were violated and no opportunity was given; that his termination is mala fide as the Management had no power to extend the probationary period beyond 12-6-67. Hence the workman has prayed that the order of his discharge be quashed and he reinstated with full back wages and continuity of service.

4. The Management controverted the claim and allegations of the workman and asserted that the order of termination is legal valid and justified. It further submitted that the workman had not come to the Tribunal with clean hands as he had not disclosed as to what he had been doing all these years since his termination and he had also not disclosed as to what was his performance during the period of his probation. It was further added that workman was found not reliable and his integrity was doubtful and his work and behaviour was found to be unsatisfactory. He has also not disclosed the vigilance case proceeded against him. He was charge sheeted and found guilty of misconduct by the Competent Authority and all the charges proved against him and consequently he was punished by the Competent Authority and the punishment awarded was not challenged by the workman. It was further submitted that a typographical error had crept into the first order extending the period of probation upto 12-12-67 and by the subsequent order this error was corrected and the date upto which the probation was extended was substituted as 12-6-67.

5. The first point that comes to notice in this case is the extra ordinary delay in the making of the order of reference to this Tribunal. As has been noticed, the services of the workman were terminated on 4-11-68 whereas the order of reference was made only on 22-12-1987. The entire burden of this delay cannot be placed on the workman. He was responsible for some delay. The workman raised a dispute before the conciliation officer which ended failure vide minutes of discussion held on 16-4-1971 (Ex. M-4) and the Government of India Ministry of Labour communicated to the workman vide letter dated 1-10-71 (Ex. M-5) that the Government of India did not consider the dispute as fit for reference to an Industrial Tribunal as the action of the Management terminating the services of the workman could not be considered as mala fide. Thereafter the workman filed a writ petition in the Delhi High Court in the year 1972. As is seen from the copy of the order of the High Court dated 11-9-87 (Ex. M-6) the writ petition of the workman was dismissed on 11-1-85 in default and it was restored only on 11-9-1987. The delay from 11-1-85 to 11-9-87 can to an extent be attributed to the workman. When it may have been reasonably for the delay, the situation has changed beyond repair with the result that it may not be desirable to order reinstatement of the workman even if the order of his termination is found to be illegal. On the other hand the Management has raised the plea that it has lost all the records pertaining to this case and it has to be considered sympathetically as it is reasonably probable.

5. Regulation 4.19(3) as cited in para 5 of the claim statement is reproduced below :—

"(i) Every person regularly appointed to any post in the corporation under sub-clause (a) of clause (1) of regulation 4.12 shall be required to be on probation for a period of one year from the date of appointment.

(ii) The appointing authority may in his discretion extend the period of probation by a further period not exceeding six months.

(iii) During the period of probation, an employee directly recruited shall be liable to be discharged from service without any notice and an employee promoted from a lower post to a higher post shall be liable to be reverted to the lower post, without notice.

- (iv) An employee, who has satisfactorily completed his probation period in any post shall, thereafter be confirmed in that post."

There is no ambiguity that the period of probation which has initially to be one year can be extended only by a further period not exceeding six months. In other words the period of probation of an employee appointed to any post cannot exceed 1-1/2 years. The course of action available to the Management at the end of the probation period of one and half years is, either to confirm the employee on his having satisfactorily completed his probation period or to discharge him from service. In the present case the Management passed the order of discharge only on 4-11-68 i.e. much beyond the expiry of the maximum period of probation of 1-1/2 years which ended on 12-6-67. However, there is another dimension to this matter. The workman in his cross-examination as VWI admitted that during his probationary period there were disciplinary proceedings against him and he was suspended on 13-6-66 and enquiry proceedings started and as a result of the enquiry he was awarded punishment of stoppage of two increments without cumulative effect which he would have earned after the expiry of the probationary period which would have expired on 12-6-67. The span of punishment of stoppage of two increments would have ended on 12-6-69 if he had continued in service but his services were terminated on 4-11-68. It has been argued by Id. representative of the Management that the rules and circulars of the department and the rulings of the Hon'ble Supreme Court cited by the workman would have been relevant if his probation period would have been completed satisfactorily. But in the present case not only the work and conduct of the workman was not satisfactory, there were disciplinary proceedings against him and his services were under suspension from 7-6-66 to 5-1-67. The workman was reinstated vide order dated 5-1-67 and at the same time he was awarded punishment of stoppage of two increments which would become due to him after completion of his period of probation. In the circumstances the workman was not entitled to be considered for confirmation during the period of punishment which would have ended on 12-6-69, nor would the workman be deemed to have been confirmed after the lapse of the extended period of probation in view of the fact that workman continued to be a temporary hand and his work and conduct was not found satisfactory and under the circumstances the workman could only be deemed to be confirmed on probation. The argument of the Id. representative of the Management is specious because there is no rule or authority to the effect that if during the period of probation the employee is awarded some punishment, the period of probation automatically gets extended so as to coincide with the period of punishment. The work and conduct of the workman was very much before the Management even at the end of his extended period of probation, because by that time workman had been suspended and charge sheeted and punished and if it was the intention of the Management to terminate the services of the workman as a result of his unsatisfactory performance during the probation period, it could have discharged the workman on or before 2-6-67 and hence there was clear lapse on its part to have alleged the workman to continue beyond 12-6-67 and discharge him from service on 4-11-68 on the ground of unsatisfactory performance during probation. Under the circumstances, there is no alternative but to hold that the action of the Management in terminating the services of the workman in terms of regulation 4.19(3) of the office manual Volume I is clearly illegal. All the same the work and conduct of the workman during the probation period was patently unsatisfactory because there was vigilance case against him in which he was suspended and remained suspended from 7-6-66 to 5-1-67 whereafter he was awarded punishment of stoppage of two increments. It is to be noted that the said order of punishment has not been set aside and is final. Therefore, it was a clear case of unsatisfactory performance during the probation and there was no question of automatic confirmation on the completion of the probationary period. It is further to be noted that by the time of his termination on 4-11-68, the workman had completed almost 3 years of service. He had even completed almost 1-1/2 years of service even after the expiry of the maximum period of probation allowed under the regulations. Even if the contention of the Management that it was a case of discharge simpliciter is accepted. It was a clear case of retrenchment and the Management was under obligation to comply

with the provisions of section 25-F of the I.D. Act but it has not done so.

6. In view of the discussion made above, although the action of the Management of termination of services of the workman vide order dated 4-11-68 in terms of Regulation 4.19(3) of the P.C.I. Office Manual Vol. I is illegal, yet I am of the view that this is not a case where reinstatement in service is called for because the work and conduct of the workman during the probationary period was not at all satisfactory in as much as he admittedly was suspended and charge sheeted for a Vigilance case against him for which he was also awarded punishment during the period of probation. However, there is sufficient justification for awarding compensation to the workman for the acts of commission and commission on the part of the Management. It is, therefore, directed that the workman may be paid the lump sum compensation of Rs. 50,000 within one month of the enforcement of this award failing which the Management shall be liable to pay compound interest at 12 per cent per annum till actual payment. This reference stands disposed of accordingly.

G. S. KALRA, Presiding Officer
[No. 1-42012/59/71-D.IIB(Pt.)/IR.(C. II)]

नई दिल्ली, 6 फरवरी, 1990

का. श्र. 485 -- औद्योगिक विवाद अधिनियम 1947 (1947 का 14) का प्राग 17 के अनुसूचना में, केन्द्रिय सरकार व भैरव ईस्टन कोलफील्ड्स लिमि की बंकोला कोलियरी के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच, झगड़ में निर्दिष्ट औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करता है, जो केन्द्रिय सरकार को 2-2-90 का प्राप्त हुआ था।

New Delhi, the 6th February, 1990

S.O. 485.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bankola Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 2nd February, 1990.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 35 of 1984

PARTIES:

Employers in relation to the management of Bankola Colliery of M/s. E. C. Ltd.,

AND

Their Workmen.

APPEARANCES:

On behalf of employer—Mr. T. K. Basu, Counsel with Mr. M. N. Kar, Advocate.

On behalf of workmen—Mr. D. L. Sengupta, Senior Advocate with Mr. Saibal Mukherjee, Advocate for Colliery Mazdoor Congress, Mr. C. S. Banerjee, General Secretary for Colliery Mazdoor Union, Cinema Road.

STATE: West Bengal.

INDUSTRY: Coal.

AWARD

By Order No. L-19011(1)/84-D.IV(B) dated 26th July, 1984, the Government of India, Ministry of Labour & Rehabilitation (Department of Labour) referred the following dispute to this Tribunal for adjudication:

"Whether the Notice under Sec. 9A of the I.D. Act, 1947, issued by the management vide their letter No. BK/PD dated 9th September, 1983 is illegal and inoperative? If so, what should be the necessary direction?"

"Whether the action of the management of Bankola Colliery of E.C. Ltd., PO Ukhra, District Burdwan, in withdrawing the benefits/facilities enjoyed by the following clerks (List attached) of Bankola Colliery for their work on Sundays since long, by their Notice dated 9th September, 1983 is justified? If not, what relief these workmen are entitled to?"

List of the workmen

Cash Section.

1. Sri Sambhunath Mukherjee
2. Sri Kanti Ram Mondal
3. Sri Shanti Ram Mondal
4. Sri Nirmal Biswas
5. Sri Rabi Burman

Leave Section

6. Sri Bijoy Ch. Pandit
7. Sri Ramaniup Pandit
8. Sri Dipak Adhikari

Personnel

9. Sri Swapan Mukherjee
10. Sri Krishna Dulal Roy
11. Sri Nand Kishore Sharma

CMPF & Bonus

12. Sri Sayed Abdul Latif
13. Sri Sov Nath Singh
14. Sri Amiya Singha
15. Sri A. S. Mukherjee
16. Sri Lalit Chatterjee
17. Sri Arup Mukherjee

Store

18. Sri Balaram Gupta
19. Sri Swapan Kr. Bose
20. Sri Arindam Bhattacharjee
21. Sri Dija Pada Ghosh
22. Sri Mohibul Hussain
23. Sri Basudev Paul
24. Sri Basanta Banerjee
25. Sri Deban Thakur
26. Sri Anil Roy
27. Sri Manik Bourl
28. Sri Subhash Dey
29. Sri Durga Das Ghosh
30. Sri Samir Sadhu
31. Sri Md. Hussain
32. Sri Lakhi Kanta Nayak
33. Sri Ram Lakhon Choudhury
34. Sri Abdul Wahid
35. Sri Prafulla Chatterjee
36. Sri Dasurath Mishra

O.S.

37. Sri Nageswar Pd. Slugh

Despatch

38. Sri S. P. Bhattacharjee
39. Sri Dillip Mandal
40. Sri Biswanath Nandi
41. Sri Bhut Nath Mandal
42. Pinaki Bhushan Das
43. M. S. Ganapati Sharma
44. Sri D. Bharati
45. Sri Sanat Kumar Mukherjee, Clerk.

2. Colliery Mazdoor Union, Cinema Road, Colliery Mazdoor Union, Madhaigange Road, Colliery Mazdoor Congress and Khan Shramik Congress, Cinema Road are parties to

the reference representing the workman besides the Agent, Bankola Colliery of E.C.L. as the employer. All the four Unions have filed their respective written statements which are on the same lines in substance. The case as made out in the written statements by the aforesaid Unions espousing the cause of the workmen is briefly as follows : The 45 concerned workmen named in the schedule to the reference are Clerks in different sections of the colliery where their work on Sundays was regularly necessary and as such had their working day on Sunday. The rest of the other workmen of the colliery enjoyed Sundays as their fixed weekly holiday. The concerned workman had their rest day on another day of the week because of their work on Sunday.

3. The fixed off-day on Sunday had the utility to the working class in general in as much as they could join and enjoy together social, religious and cultural community leave which was not possible if any worker was made to work on Sundays regularly. This and many other limitations suffered by the concerned workmen for working on Sundays made them practically isolated as a member of a different community much to their grievance and prejudice. The concerned workmen were forced to work regularly for years together, in many cases since the date of their appointment and covering a period of 20 years or more and enjoyed benefits of the said system/practice of working on Sundays with service conditions mutually settled between the colliery and the concerned workmen. For working on Sundays they used to be treated as doing special work and as such entitled to special remuneration, the measure of which was equivalent to the rate of overtime as might be fixed from time to time. Such workmen were allowed to enjoy another day of the week as rest day, though not fixed as a regular off-day. The extra payment made for their work on Sundays used to be deemed as wages and as such included for deduction of Provident Fund and other contribution. As a matter of mutual understanding between the colliery and the concerned workman, the above practice had been continuing for a sufficiently long time without any break and without any inconvenience to the industry and constituted the service condition of the concerned workmen.

4. The management of the colliery arbitrarily stopped the concerned workmen's work on Sundays on the plea of the issue of notice under section 9A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with effect from 1st October, 1983, thereby causing loss to the earning of the concerned workmen depending on the number of Sundays in a particular month. The rates of the payment of the extra remuneration for work on Sundays were being enjoyed by the concerned workmen in terms of the provisions of the National Coal Wage Agreement (N.C.W.A. in brief). The aforesaid arbitrary and unilateral action of the management of the colliery without getting the service conditions changed either by a settlement between the parties or by an award of the competent Tribunal was void and illegal.

5. The case of the concerned workmen was taken up by the Unions with the management but to no effect. The dispute was then taken to the Conciliation Officer whose failure report resulted in the instant reference.

6. The case as made out by the employer Colliery in their written statement is briefly as follows: The instant reference is illegal according to the Colliery and this Tribunal has no jurisdiction to adjudicate upon the said reference.

7. All the concerned workmen are working at Rankola Colliery of F.C.L. excepting two workmen who retired and one workman who had since been transferred from Bankola Colliery. Some of the concerned workmen were taken-over employees and the rest were given employment after take-over. Prior to nationalisation and even thereafter there was a system of weekly payment in vogue at the Bankola Colliery and such system continued till January, 1974. Under the said system it was required that the wages of the workmen who were to work from Monday to Saturday were being paid in ensuing week by Tuesday or Wednesday. For this purpose, all Bill Clerks and some other Clerks were called for duties on Sundays, so that the weekly payment to the workers could be made in time. The said system of weekly payment was stopped with effect from second quarter of 1974, when the payment was made to the workmen, both monthly and time-rated, once in a month; and as a consequence the deployment of the Bill Clerks and other Clerks on Sundays became unnecessary.

8. Subsequently with effect from October 1982 the billing of the ungraded and monthly rated employees was started through I.B.M. system which is still in vogue for such employees and by reason thereof the work-load for the Billing Clerks and Coal Mines Provident Fund Clerks and to some extent of other Clerks was reduced considerably. Earlier while payment was being made on weekly basis, Sick Leave Wages were billed and paid separately. By reason thereof the Clerks of Leave Section were required to be called on Sundays by the erstwhile management so that the workmen could be paid their said wages alongwith the weekly wages. Further, earlier there was inadequate number of employees working in the stores. The Clerk working in the stores were not able to complete their all records on the working days. In order to remove such back-log arising out of work-load, the said Clerks were called on Sundays to do the jobs such as posting of ledgers, receipt books etc. Since thereafter same system had been evolved by deploying Clerks in stores in such way so as to enable them to complete their jobs during the working days of a given week and consequently the deployment of the said employees on Sundays became unnecessary.

9. The persons required to be deployed on Sundays are decided by the management on the basis of its requirement. The deployment of staff on Sundays varies from one Sunday to another Sunday depending upon the quantum of work required to be done. On the basis of the assessment made by the local management about the quantum of work, the employees are called upon to work on Sundays.

10. After making the proper assessment of the quantum of work the management stopped the deployment of the concerned 45 workmen as it was felt by the management that the purpose for which the said persons were deployed on Sundays was no more in existence.

11. The management gave a notice under section 9A of the Act to effect a change by making Sunday as rest day even though no such notice was required under the law. The extra wages paid to the concerned workmen by reason of their deployment on Sundays are incidental only and the same was variable from mine to mine, season to season and department to department. Such being the position, the extra wages so accrued by reason of working on Sundays were not the part of their wages by any stretch of imagination.

12. The management has denied that the concerned workmen were getting the extra wages for their work on Sundays for the last 15/16 years. According to the management, some of the concerned workmen were required to work on Sundays even earlier because of the weekly payment of wages. The irregularity in deployment of the workmen on Sundays compelled the management to take a decision to restrict the deployment of the workmen on Sundays commensurate with actual requirement of the work as is done now.

13. Prior to coming into force of NCWA-II in the colliery with effect from 1st January, 1979 the workmen concerned who work on Sundays were paid 1-1/2 time wages along with a day of rest and after coming into force of NCWA-II the workmen concerned who work on Sundays were paid double wages along with a day of rest. It has been further contended that the unions are bound by the NCWA-III which came into effect from January, 1983. It has been further contended by the management that it was for the exigencies of the work of the colliery, the employees are required to work on Sundays and such work on Sundays by the concerned workmen cannot be termed as condition of service. The notice under section 9A of the Act was not necessary and the same was issued as and by way of abundant caution. According to the management there has been no change in the condition of service of the concerned workmen. The concerned workmen are therefore not entitled to any relief in the present reference.

14. Both parties have given evidence oral and documentary and have made their respective submissions through their respective counsels.

15. The first issue in the reference is whether the notice under section 9A of the Act issued by the management under their letter dated 9th September, 1983 is illegal and inoperative and the second issue is whether the action of the man-

agement in withdrawing the benefits/facilities enjoyed by the workmen named in the schedule to the reference for their work on Sundays since long by the management's notice dated 9th September, 1983 is justified.

16. It is an undisputed fact that the Sunday is a declared rest day in the colliery in question. According to the union, the concerned workmen as named in the schedule to the reference were working on Sundays and getting the Sunday wages at the higher rate as mentioned in the N.C.W.A. since long and that accordingly their work on Sundays developed into a condition of service in respect of them. Let us now see the respective cases as made out by the parties in their evidence before the Tribunal with regard to the concerned workmen's work on Sundays till before 1st October, 1983 when the work on Sundays of the concerned workmen was stopped.

17. There is no dispute to the fact that the management issued the notice dated 9th September, 1983 under section 9A of the Act signifying their intention to effect a change in the day of rest of the concerned workmen and to fix the same on Sunday in terms of NCWA-II. The said notice is Ext M-3 and it has been termed as the notice of change of service condition. The notice clearly shows that the management is giving the notice to all concerned with the intention to affect the change of the day of rest and fix the same on Sunday with effect from 1st October, 1983 in respect of the concerned workman.

18. MW-1 Mr. G. R. Pachesia who was the Manager in Bankola Colliery during the period from 1979 to 1983 has stated in his evidence that the said notice was given by way of abundant caution, although it was not at all necessary because according to him the concerned workmen did not get the Sunday as their working day by way of any condition of service. Such case was also made out in the written statement filed by the management. The notice dated 9th September, 1983 under section 9A of the Act, Ext. M-3 however shows that the said notice was issued with the intention to affect a change in the day of rest as enjoyed by the concerned workmen and to fix the same on Sunday after treating such alteration as the change of service condition. The management cannot now shift from the stand taken in the said notice long before in 1983. The recitals in the said notice clearly establish that the concerned workmen in respect of whom such notice was issued were not enjoying their rest day on Sunday which was the declared rest day in the colliery but they were enjoying some other one day from Monday to Saturday as their rest day and that they used to work on Sunday. This particular fact has been established by the recitals in the notice under section 9A of the Act (Ext M-3) irrespective of the fact whether such notice under section 9A of the Act was at all unnecessary or was given by way of abundant caution.

19. MW-1 Mr. Pachesia has stated in his evidence that the workmen named in the schedule to the reference were working on Sundays before October, 1983, although the Sunday is the declared rest day under the Mines Act in the Bankola Colliery which is the concerned colliery. He has further stated in his evidence why the concerned workmen were required to work on Sundays till before the introduction of Bradma system in preparing the bills and doing some other works in connection therewith and that their work on Sundays was not found necessary after the introduction of such Bradma system. His evidence further shows that the concerned workmen used to enjoy the Friday as the rest day because of their work on Sunday. This witness Mr. Pachesia has further admitted in his evidence that he does not know the year in which it was introduced that the concerned workmen should also work on Sundays in preparing the wage bills. Mr. Pachesia (MW-1) has further stated in his evidence that the workmen concerned used to work on Sundays not on overtime wages as per the Mines Act but on Sunday wages as per the National Coal Wage Agreement (NCWA). The evidence further discloses that the concerned workmen were working on Sundays since before the nationalisation of the colliery. Mr. Pachesia has further admitted in his deposition that there is no other law to stop the work on Sundays of the concerned workmen except the notice which was given under section 9A of the Act by way of abundant caution. It may be mentioned here that the management has examined Mr. Pachesia (MW-1) as their only witness.

20. The Unions have also examined only one witness WW-1 Bijoy Chandra Pandit who is one of the concerned workmen as named in schedule to the reference. His evidence shows that he is the Leave Clerk and that he used to work on Sundays since before the nationalisation of the colliery like other concerned workmen. He has stated in his evidence that the management stopped them to work on Sundays by issuing a notice in 1983. His evidence further shows that the management did not stop their work on Sundays as a result of any discussion or agreement between the management and the union. According to his evidence, the management stopped their work on Sundays with intent to deprive themselves of getting four days extra wages as per the provisions of NCWA-II and III. He has clearly stated in his evidence that their work on Sundays was not the overtime duty. It has been stated while discussing the evidence of MW-1 Mr. Pachesia that according to his own evidence the concerned workmen is to work on Sundays not on overtime but on Sunday wages as per the NCWA.

21. The above discussion of the evidence of MW-1 and WW-1 does not establish the management's case as made out in their written statement that the concerned workmen named in the schedule to the reference did not work on Sundays and did not enjoy the Friday as the rest day and that some of them were asked to work on Sundays according to the requirement and call by the management for the purpose. It could not be established by the evidence also that the concerned workmen were enjoying the Sunday as declared rest day excepting some Sundays when some of the workmen were required to work as per the requisition by the management.

22. It is true that the management has produced wage sheets for the month of December, 1979 Ex. M-4 collectively to show that all the workmen named in the reference did not work on all the Sundays in that month. It however appears that some workmen worked for five Sundays in the said month and some worked for lesser number of Sundays in the said month. The Learned Advocate for the employer Company placing reliance on such wage sheets has submitted that the said wage sheets show that only those workmen who used to be requisitioned for work on a particular Sunday used to do their work on such Sundays. The management has not produced any paper or any notice to show that the management used to requisition the service of some workmen for their work on any particular Sunday. Similarly the Learned Advocate for the employer Company placing reliance on some entries in the Bonus Register for the year 1977 Ex. M-6 and M-6/A has submitted that Ext. M-6 shows that Bijoy Chandra Pandit one of the concerned workmen did not do any overtime in that year and that Ext. M-6/A shows that Arviya Kumar Sinha another workman named in the reference did only two days overtime in December, in that year.

23. It appears from the wage sheets Ext. M-4 and from the evidence of MW-1 that overtime wages and Sunday extra wages are two different wages. The wage sheet Ext. M-5 also contains the column by showing "O.T. Pay/E.P.". E.P. means extra pay. The wage sheet Ext. M-4 bears a separate column 'Sunday extra'. So wages for Sunday work do not appear to be the overtime wages, although before the introduction of NCWA-II on 1st January, 1979 the wages for Sunday was 1-1/2 time of the normal wages and after the introduction, of the said NCWA-II the wages for Sunday was the double of the normal wages for any working day.

24. On due discussion of the evidence of MW-1 and the notice under section 9A of the Act Ext. M-3 it has already been stated that the management issued the said notice for a change of the rest day of the concerned workmen and to fix the same on Sunday in terms of NCWA-II, thereby implying that the Sunday which was the declared rest day in the colliery was not the rest day for the concerned workmen as named in the reference. It may be that all the workmen named in the reference did not work on all Sundays in the month of December, 1979 as per the wage sheets Ext. M-4 but the same does not establish that the rest day of those workmen who did not work on Sunday was on Sunday itself. Some of the workmen might not have worked on a particular Sunday because of any personal difficulty of its own. Accordingly the wage sheets Exts. M-4, M-5 and the bonus register entries Exts. M-6 and M-6/A do not demolish the fact that the workmen concerned named in the reference used to work on Sundays which was the declared rest day in the colliery and that their rest day was on Friday as deposed by WW-1.

25. In view of what has been discussed above, I find that by the long practice of working on Sundays and by taking rest on some other day in the week, the concerned workman named in the reference acquired the said system as a condition of their service. The issue of the notice under section 9A of the Act Ext. M-3 by the management supports the fact that the management also accepted the same as the condition of their service and accordingly issued the notice to affect a change in the same, although in evidence MW-1 has stated that the said notice was unnecessary and that it was given only by way of abundant caution.

26. Be that as it may, now the question comes in for discussion whether by the mere issue of such notice under section 9A of the Act Ext. M-3, the management can say that they have effected the change in such condition of service. Of course in the evidence the management has made out a case that the management stopped the work on Sundays of the concerned workmen from October, 1983. It may be mentioned here that the notice under section 9A of the Act was issued on 9th September, 1983. According to Mr. Sen Gupta, the Learned Advocate for the workmen, the aforesaid notice under section 9A of the Act cannot change the condition of service of the concerned workmen because the concerned workmen's work on Sundays and their enjoyment of rest day on another day in a week have been protected by the NCWA-II which came into force in 1979. Clause 11.1.1 of Chapter-XI of the NCWA-II clearly states that the existing benefits and facilities not covered or altered by this agreement shall continue as hitherto. So NCWA-II appears to have protected the existing benefits and facilities which were enjoyed by the concerned workmen named in the reference from long before the nationalisation, which were not covered and altered by NCWA-II. The concerned workmen have been successful to show that they were working on Sunday which was the declared rest day in the colliery and that they were getting rest day on another day in the week. So the said existing benefits and facilities which have taken the form of condition of their service, have been protected by the NCWA-II. Such condition of service which has been protected by the NCWA-II cannot be altered by mere issue of notice under section 9A of the Act, although the issue of such notice is mandatory to change the condition of service which is also covered by the agreement/settlement between the employer and employees like NCWA-II. It is the well-settled principle of law as understood from the decision in the case of South Indian Bank vs. Chacko reported in 1964(1) LLJ 19 that the condition of service of the workmen as settled by an agreement between the employer and the employees or by an award of the Tribunal can only be altered by subsequent settlement by the parties or award from the competent Tribunal. It appears that the management has not resorted to such recourse to affect the change as contemplated by them and as indicated in their notice under section 9A of the Act Ext. M-3. Such being the position, the action of the management in withdrawing the benefits and facilities enjoyed by the workmen named in the reference for their work on Sundays by the notice dated 9th September, 1983 under section 9A of the Act is not justified. The notice under section 9A of the Act given by the management does not appear to be illegal, although the management has taken up the plea before this Tribunal that the said notice was unnecessary and that it was issued only by way of abundant caution.

27. In view of what has been stated above, the order of the management stopping the concerned workmen from working on Sundays and stopping them from enjoying the other day in the week as rest day is set aside and the benefits and facilities as were being enjoyed by the concerned workmen with regard to their work on Sundays shall continue unless the same are altered according to law. As regards the workmen's claim for getting the Sunday wages from 1st October 1983, although they did not work on Sundays because of the order given by the management, I think that ends of justice will be met if each of them is given 24 Sundays' wages in a year during the period from 1st October, 1983 till the date of this award.

This is my Award.

SUKUMAR CHAKRAVARTY, Presiding Officer

Dated, Calcutta,
The 24th January, 1990.

[No. L-19011/1/84-D.IV.B/IR (C.II)]
R. K. GUPTA, Desk Officer

नई दिल्ली, 2 फरवरी, 1990

का. प्र. 486. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट एवं टेली-ग्राफ, मेरठ के प्रवर्धन के सम्बन्ध में नियंत्रकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचत को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-90 को प्राप्त हुआ था।

New Delhi, the 2nd February, 1990

S.O. 486.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure. in the industrial dispute between the employers in relation to the management of P&T Meerut and their workmen, which was received by the Central Government on 30-1-90.

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANDU NAGAR, KANPUR
Industrial Dispute No. 77 of 1989

In the matter of dispute between :
Shri Ramesh Chandra,
s/o. Daya Shanker,
11/2 P&T Colony,
Mawana Road Meerut.

AND

Senior Supdt of Post Officers,
Meerut.

AWARD

1. The Central Government, Ministry of Labour vide its notification no. L-40012/13/88 D-II(B) dt. 20-3-89 has referred the following dispute for adjudication to this tribunal for adjudication :—

KYA Meerut Division ke Sambandh me varishtha Adhikshak ke prabandhtantra ke Shri Ramesh Chandra Suptra Shri Daya Shanker ki 12-10-86 se Sewayen Sampat karno ki Karvahi Nyayochit hai ? Yadi nahi to yah karmkar kis anutosh ka naqdar Hai ?

2. The workman's case in brief is that he was appointed in clear vacancy against the designation of Shri Sant Ram as C. P. Chowkidar caused by P&T Colony, Mawana Road Meerut by means of appointment letter dt. 3-4-81, copy annexure A issued by the Inspector of Post Offices (North) Meerut. On 2-10-86, Shri R. D. Tripathi (should be Sh. K. K. Tripathi), the new IPO (North) Meerut, misbehaved with him for which he sent a telegram, copy annexure B, to the Director Postal Services Dehradun on 3-10-86 and also addressed a written complaint dt. 3-10-86, copy annexure C, to SSP (Postal) Meerut Division. The officers to whom the complaints were made by him did not approve of his action regarding making of complaints and so with mala fide intention his services were terminated orally w.e.f. 12-10-86 although he had worked continuously from 3-4-81 to 11-10-86. He was not given any notice or notice pay nor retrenchment compensation. Thus the management committed breach of the provisions of Sec. 25-FFF I.D. Act. The workman alleges that the said post of CP Chowkidar in the P&T Colony, Mawana Road, Meerut still exists and in his place another person is working. He further alleges that persons junior to him, such as S/Sh. Jumma, Abdul and Ram Kumar, were working at Doghat, KP Baral and Meerut HO-I respectively at the time of termination of his services. By means of order dt. 1-10-87, copy annexure E, all the chowkidar who had worked upto 35 years continuously were regularised and their wages revised. After the termination of his services S/Sh. Janeshwar, Satya Pal, Mool Chandra and Jai Kumar were appointed as CP Chowkidars at Daurala, Lawar, Sardhana and Parichitgarh respectively. Thus the management committed breach of the provisions of section 25G and 25H I.D. Act also. He has,

therefore, prayed that by declaring the order of his termination of his services as illegal, he be reinstated with continuity of service with full back wages and all consequential benefits.

3. The case is contested by the management. The written statement filed on behalf of the management is signed by Sr. Suptd. of Post Offices, Meerut Division. He pleads that the case set up by the workman is baseless. He was never appointed to any post of Chowkidar at Mawana colony, Meerut. Before any appointment is made there must exist a post or a post is created. It is only he who is competent to create a post of part time or full time contingent paid staff. He never ordered the creation of any post of CP Chowkidars for Mawana Road Colony, Meerut. According to him the workman has cooked up a story of misbehaviour against Shri K. K. Tripathi SPI (P) North Sub-Division. It is then pleaded by the Sr. Suptd Post Offices that after the construction of Mawana Road Colony there was a time lag between handing over of the colony by Constructing Agency till the occupation of all its quarters by employees of Postal Department. As a matter of fact the construction of the colony commenced in 1975 and it took many years to complete the construction work. Of and on some day Madzoors were needed to look after the building, construction materials etc. As the colony is on the outskirts of the town for guarding building and the material SPI (North) in whose jurisdiction the said colony fell used to engage one person or the other depending on the necessity. On the strength of the certificate given by the SDI North, persons so engaged were paid wages on daily rates. The practice was continued by S/Shri R. B. Rastogi and Champat Singh, who had held the charge of SDI 'North'. After taking over charge by Shri K. K. Tripathi SDI North, it was found by him that the necessity for engaging chowkidar did not exist any longer, so the services of workman Shri Ramesh Chandra were dispensed with. In the residential colonies chowkidars, if any, are engaged by residents themselves. The departmental chowkidars or contingent paid chowkidars are engaged only in government offices where cash and valuables are kept for over night custody. He pleads that the services of the workman were hired on day to day basis. With regard to appointment or engagement of CP Chowkidars at Daurala, Lawar, Sardhana and Parichitgarh, he pleads that these areas are under the jurisdiction of the concerned SDI's and his office did not engage any CP Chowkidar. The above mentioned places are outside the Municipal limits and from part of Rural Area. Moreover, these posts are not related in any manner to the alleged post of chowkidar in the Mawana Road Colony.

4. In his rejoinder, the workman alleges that he was regularly employed as chowkidar. Even if the post of chowkidar at Meerut was abolished which fact is not admitted he should have been offered employment at other places.

5. In support of his case, the workman filed his own affidavit and a number of documents. On the other hand, in support of their case the management have filed the affidavit of Shri Amiruddin Public Relation Inspector and a number of documents.

6. The first and foremost question to be considered in this case is whether or not the workman was validly appointed. Ext. W-3 is the order of appointment dt. 3-4-81, showing that the workman was appointed provisionally as CP Chowkidar P&T colony, Mawana Road, Meerut, vice Sh. Sant Lal who had submitted his resignation by Shri R. B. Rastogi, Inspector of Post Offices (North) Meerut. The document has been admitted by management witness in his cross examination. Ext. M-1 is the order dt. 9-10-86 of Sr Suptd of Post offices Meerut Div, abolishing the post of CP Chowkidar P&T Colony, Mawana Road, Meerut with immediate effect.

7. EM. Vol-5 is the copy of Rule 335 of Financial Hand Book Vol. I. It lays down that categories of employees e.g. Dhobies, Tailors, Syces, Grass Cutters etc. who do not work side by side with regular employees or with employees in workcharged establishment are treated as casual employees. They are to be treated as contingent staff and their pay and allowances are drawn on bills for contin-

gent expenditure. The plea raised by the management is that since Sr. Suptd. of Post Offices Meerut Division, who alone was competent to create of post of C. P. Chowkidar had not created any such post for P&T Colony, Mawana Road Meerut, his appointment by Shri R. B. Rastogi, SDI (North) was illegal. Appointment being illegal, the workman is not entitled to any relief.

8. In the above plea of the management I do not find any force in view of documents Ext. M-1 and Ext. M-5. I will presently show that there is uncontroverted evidence from the side of workman that he had worked continuously from 3-4-81 to 11-10-86. It is not the case of the management that during the said period the workman had not been paid wages. The payment of wages to him and the passing of orders Ext. M-1 by the Senior Suptd. Post Offices Meerut Division, abolishing the post of CP Chowkidar P&T colony, Mawana Road, Meerut go to show that the appointment of the workman was with the tacit approval of the Sr. Suptd. of Post Offices Meerut Division after his appointment, *ex post facto* approval was accorded by the Senior Suptd. of Post Offices expressly or impliedly. As per Rule 335, referred to above he was to be treated as contingent whose pay and allowances were to be drawn on bills for contingent expenditures.

9. The second point which arises for consideration is as to for how many days he had worked. Ext. W-5 is the copy of letter dt. 2-2-88 from the Post Master, Meerut to the Sr Suptd of Post Offices, Meerut Division. The letter shows that the workman had worked continuously from 3-4-81 to 11-10-86. Its formal proof has been waived from the side of the management. Thus it stands proved that before the termination of his services the workman had worked continuously for more than one year.

10. Although it has not been pleaded in the written statement that the postal department is not an Industry such a plea has been raised by the management in the affidavit of their witness. This plea has no force. Now it is well settled law that the postal department is an industry in respect of staff which is not supervisory and to which Article 311 of the constitution does not apply. It is not the case of the management that at the time of termination of his services he was given any notice or notice pay and retrenchment compensation. Therefore, there was a clear violation of the provisions of Sec. 25F I.D. Act. The order of termination, therefore, cannot stand being void *ab initio*.

11. The last question that arises now as to what relief should be granted to the workman. Normally the workman in such a case is granted relief of reinstatement with continuity of service and full back wages. But in the instant case, the facts are different.

12. From Ext. M-1, which is the order dt. 9-10-86, of the Sr. Suptd. of Post Offices Meerut Division, it is clear that the post of CP Chowkidar P&T Colony Mawana Road had been abolished. The management witness in his cross examination has denied that any person by the name of Satya Pal has been kept in place of workman. The name of Shri Satya Pal has not been mentioned by the workman in his claim statement and in the rejoinder nor in his affidavit. Therefore, I see no reason to disbelieve the testimony of the management. Otherwise also after the occupation of the residential quarters built in P&T Colony, Mawana Road, Meerut the question of keeping any chowkidar by postal department does not arise. The workman has come out with the case that some appointment has been made in the rural areas of CP Chowkidars by the department. I think that he cannot take any advantage out of it. We have simply to see whether or not any appointment was made subsequently to his termination in the P&T Colony Mawana Road Meerut. Therefore, it is not a fit case for ordering reinstatement. Since, the provisions of section 25F were not complied with, it will meet the ends of justice if the workman is awarded some compensation. I think a sum of Rs. 10,000 will be a just compensation for him.

12. Hence, while holding that termination of services of Shri Ramesh Chandra v.s.d. 12-10-86 by the management

was not justified, I declare him entitled to a sum of Rs. 10,000 as compensation.

13. Reference is answered accordingly.

Dt. 6-1-90.

ARJAN DEV, Presiding Officer

[No. L-40012/13/88-D.II(B)]

का. जा. 487 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 67 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे लखनऊ के प्रबन्धन क्षेत्र के सम्बद्ध नियोक्तों और उनके कर्मचारियों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के प्रवचन को प्रकाशित करता है, जो केन्द्रीय सरकार का 30-1-90 को प्रारम्भ हुआ था।

S.O. 487.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Lucknow and their workmen, which was received by the Central Government on 30-1-90.

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 102 of 1988

IN THE MATTER OF DISPUTE BETWEEN

The Divisional Secretary

Uttar Railway Karamchhari Union 96,196 Roshan Bajaj Lane
Ganesh Ganj Lucknow.

AND

The Divisional Railway Manager
Northern Railway Hazaratganj
Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-41012/14/87-D-II(B) dt. 22-7-88, has referred the following dispute for adjudication to this Tribunal:

KYA PRABHAGIYA RAILWAY PRABANDHAK
UTTAR RAILWAY LUCKNOW KE PRABAN-
DHTANTRA KI SHRI PRADEEP KUMAR KI
23-3-85 SE SEWAYEN SAMPAT KARNE KI
KARWAHI NYAYOCHIT HAI? YADI NAHI
TO SAMBANDHIT KARAMKAR KIS ANUSHAS-
KA HAQDAR HAI?

2. The industrial dispute on behalf of the workman has been raised by the Divisional Secretary, Uttar Railway Karamchhari Union Lucknow. The case of the Union is that the workman Shri Pradeep Kumar was appointed as a porter under Station Suptd. N.R. Lucknow on 16-4-84. He was sent for Medical Examination in category A-2, but unluckily he did not succeed for that category. However, he was declared successful for category A-3 and below. Thereupon his services were terminated w.e.f. 23-3-85 without notice or notice pay and retrenchment compensation. No alternative job was provided to him by the Railway Administration on the basis of the category for which he was declared fit. The Union has, therefore, prayed that the workman be reinstated in service with full back wages.

3. The case is contested by the management. The management deny that Shri Pradeep Kumar had ever worked un-

der the Station Suptd. Lucknow as a porter during the period 16-4-84 to 23-3-85. The management also deny that he was ever sent for medical examination on 16-4-84 by the Station Suptd. Lucknow, nor had he been engaged by any competent authority. The question of compliance of the provisions of I.D. Act, in his case did not arise. The management further plead that the Union which has espoused the case of Shri Pradeep Kumar is not a recognised Union. Further Shri D. P. Awasthi, who has described himself as Asstt. Gen. Secy. of the said Union has got no authority to raise the industrial dispute on behalf of Shri Pradeep Kumar.

4. By means of the rejoinder, the Union has disputed the facts pleaded by the management. In support of its case the Union has filed the affidavit of Shri Pradeep Kumar and a number of documents. On the other hand the management, in support of their case have filed the affidavit of Shri Kiran Chandra Head Clerk, in the office of S. S. Lucknow.

5. I have heard the authorised representatives for the parties and have gone through the evidence on record carefully and find that the Union has no case in respect of Shri Pradeep Kumar workman.

6. From the cross examination of Shri Pradeep Kumar, it appears that before his engagement he was never interviewed. He admits that he was never issued any letter of appointment. He even does not know the scale of his pay. According to him his uncle Shri Madan Mohan Saxena who was a clerk in the office of D.R.M. and who retired about 9 years ago got him in the service of the Railway. He has also stated in his cross examination that after the termination of his service he never made any written complaint to any railway officer. Thus these circumstances cast grave doubts about his actually being in the service of the railway as alleged by the Union on his behalf.

7. Let us now consider the various documents relied upon by the Union. Ext. W-2 is the copy of railway pass. In his cross examination Shri Pradeep Kumar Submits that the pass in question was issued to him on the application to the Station Superintendent. He does not know who had issued it. On the other hand the management witness has deposed in his cross examination that substitute porters are not entitled to any railway pass. Only permanent porters get railway passes. In view of the statement of the management witness, which I have no reason to disbelieve, the keeping of the original pass which too has been filed by Shri Pradeep Kumar cast doubt about its genuineness. If it has not been utilised, in the normal course it should have been returned by him to the railway authorities.

8. Ext. W-4 (1-4), are copies of duty memos which are said to have been issued to Shri Pradeep Kumar by Shri Lal Chandra clerk in the office of the Station Suptd. Lucknow. According to Shri Pradeep Kumar the duty memos whenever they were issued for him, were addressed to ASM who used to enter them in a register. He has expressed his ignorance about the name of the ASM. He has also deposed that whenever he was given duty on the basis of these duty memos he deposited them with the authority who gave him duties. In respect of the duty memos in question, according to him he was told by ASM that he had no work to provide. It was in this way that these memos remained with him. The original memos have also been filed by the Union. They do not bear any office stamp nor the stamp of the officer who had issued them. These memos were also shown by Shri Awasthi, the union's representative to the management witness, who in his reply stated that he could not say whose signatures appear on these duty memos. It is also not understood how these duty memos remained in possession of Shri Pradeep Kumar. If the ASM had informed him that he no work for him, ordinarily these duty memos should have been delivered back by Shri Pradeep Kumar to the officer who had issued them.

9. Ext. W-1 is the copy of competency certificate alleged to have been issued by Safety Model Car Lucknow Division. It says that the test of Shri Pradeep Kumar was held on 21-12-84. In his cross examination Shri Pradeep Kumar says that he can not tell who had issued this competency certificate. According to him one guard who was then Safety Inspector, and whose name he does not know had given it to him.

10. Then reliance has been placed on the copy of medical memo, the copy of which has been filed with the rejoinder. The management witness was confronted with regard to it. In para 5 of his statement in cross examination, the management witness has deposed that by means of form MD-5 a person is sent for medical examination. According to him on checking records he had not come across any such form having ever been issued in the name of Shri Pradeep Kumar.

11. The management witness has also deposed in his cross examination that in 1983, no substitute porter was ever recruited. In his affidavit, the management witness has referred to the ban on recruitment of substitutes/casual labours. In this regard he has proved two printed serials Ext. M-1 and Ext. M-2. Printed serial no. 6963 is dt. 20-3-78, and printed serial no. 7716-A is dt. 3-1-81. The former says that fresh recruitment of casual labour could be made only on the personal orders of the Div. Suptd. and the latter says that fresh recruitment of casual labours could be made only with the prior approval of the General Manager. So even if it be believed that he was engaged as substitute porter as alleged by the Union, his recruitment was illegal.

12. Hence, it is not proved at all that Shri Pradeep Kumar was ever in the service of the railway as alleged by the Union and in the alternative it is held that his appointment was illegal. Consequently the reference is decided against the Union Shri Pradeep Kumar.
Dt. 18-1-90.

ARJAN DEV, Presiding Officer.
[No. L-41012/14/87-D.II(B)]

का. अ. 14-1-90—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसूची में, केन्द्रीय सरकार उत्तर रेलवे मजदूरों के प्रबंधकों के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, कानपुर के पंचद का प्रकाशन करती है, जो केन्द्रीय सरकार को 30-1-90 को प्राप्त हुआ था।

S.O- 468.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway Lucknow and their workmen, which was received by the Central Government on 30-1-90.

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT KANPUR

Industrial Dispute No. 99 of 1988

IN THE MATTER OF DISPUTE BETWEEN

The Divisional Secretary
Uttar Railway Karamchari Union
39-J-II Multistoreyed Railway Colony
Charbagh Lucknow.

AND

The Divisional Personnel Officer
Northern Railway Hazratganj
Lucknow.

AWARD

1. The Central Govt. Ministry of Labour, vide its notification no. L-41012/12/87-D-2(B) dt. 22nd July, 1988 has referred the following dispute for adjudication to this tribunal:

KYA PRABHAGIYA KARMIK ADHIKARI UTTAR RAILWAY LUCKNOW KE PRABANDHANTARA KI SHRI WAZI AHMAD SUPUTRA SHRI SADI AHMAD KI 13-9-85 SE SEWAYEN SAMAY KARNE KI KARWAHI VAIDHYA NPAGCHIT HAI ? YADI NAHI TO SAMBANDHIT KARMAKAR KIS ANUTOSH KA HAQDAR HAI ?

2. The industrial dispute on behalf of the workman Shri Wazi Ahmad has been raised by Uttar Railway Karamchhari Union (hereinafter referred to as Union) Lucknow.

3. The case of the Union is that the workman was declared medically fit by the railway doctor vide memo no. 056593 dt. 11-3-83, for category A-2. After that the workman continued working under the Station Suptd. Lucknow on 15-9-84. Subsequently on his request he was transferred to Barabanki to work as porter under Station Superintendent Barabanki. Under the Station Superintendent, Barabanki he continuously worked from 17-9-84 to 17-9-85 where after his services were illegally terminated without notice or notice pay and retrenchment compensation. The Union has therefore, prayed that the workman be reinstated with full back wages and all consequential benefits.

4. In defence, the management while admitting the fact that the workman was declared medically fit for category A-2 by the railway doctor on 11-3-83, plead that the workman worked as substitute porter at Lucknow Station for 137 days during the period 16-1-84 to 13-8-84. Since the appointment of substitute porter at that time was banned, his appointment w.e.f. 11-3-83 was not legal. Therefore, the appointment having been obtained fraudulently by the workman he could not be held as an employee of the railway administration. The management further plead that the workman reported for duty vide DRM Office Letter no. 220-E/6-9/CL/84 dt. 3-8-84, which contained the direction that the services of the workman be utilised against day to day casualties/vacancies. In compliance of the said letter the workman was directed to work as casual substitute w.e.f. 18-9-84. He worked as such upto 17-9-85. It is then pleaded by the management that the workman had been asked to produce the proof of his earlier engagement, but he failed to produce such proof. Rather he absented himself from duty w.e.f. 17-9-85. On account of his absence the vacancy against which he was working was filled up by posting Shri Ram Prasad Porter, on regular panel hand. Thus with the posting of Shri Ram Prasad no vacancy of porter remained to be filled up. The workman was discharged w.e.f. 18-9-85, due to his continued absence.

5. In the rejoinder, the Union has alleged that the workman was engaged as a casual labour on 15-9-76 and as a substitute porter on 11-3-83. He was transferred from Lucknow to his home town Barabanki on his request. The Union denies that the workman absented himself w.e.f. 11-9-85 as pleaded by the management. Against his illegal termination of services, the workman made representations to the railway administration on 30-9-85 and 31-1-86 respectively but in vain. No other new fact has been alleged by the Union in the rejoinder.

6. In support of its case, the Union has filed the affidavit of the workman and a number of documents. On the other hand in support of their case, the management have filed the affidavit of Shri D. N. Varshaney, who has been Station Suptd. Barabanki since 1-8-87 and a few documents.

7. The Union's case, is that the workman had worked as a substitute porter under SS Barabanki from 17-9-84 to 17-9-85. The fact is corroborated by the workman himself by means of his affidavit. With his affidavit, the workman has filed the copy of certificate dt. 15-9-86 issued by Station Suptd. Barabanki. It is annexure 4 to the affidavit. From the said certificate it appears that the workman had worked continuously at Barabanki from 18-9-84 to 17-9-85. This fact as it comes out from his certificate has been admitted by the management witness in para 2 of his statement in cross examination. One of the most important question to be considered in this case is whether the workman had abandoned the job as pleaded by the management or his services were terminated as alleged by the Union.

8. In his cross examination the management witness has deposed that some time before 17-9-85, record regarding his having worked at Lucknow Railway Station was demanded from the workman who instead of producing it absented himself from duty from the afternoon of 17-9-1985. On the other hand in his cross examination the workman has deposed that the Station Suptd. Barabanki never demanded from him record of his past services. According to him on 18-9-1985, the Station Suptd. Barabanki informed him that since there was no vacancy he could not be kept in service. The workman has further deposed that he complained about

the matter in writing on 30-9-85 DSO who passed an order on it the same day and directed him to see the Station Suptd. Barabanki. He went to Shri Ram Bahul Singh, the then Station Suptd. Barabanki, with the said complain bearing the order of the D.S.O. but to his dismay, the Station Suptd., took no action. Before delivering his complaint bearing the order of DSO he had got prepared a photostat copy of it. On getting his complaint at the hands of Station Suptd. Barabanki, he again saw the DSO, who assured him that he (DSO) would als Station Suptd. Barabanki for the redresses of his grievances.

9. In para 5 of his affidavit the workman has deposed that on his request he was transferred to work under Station Suptd. Barabanki vide letter dated 31-8-1984, copy annexure—4. Annexure 4 is the photocopy of letter dated 31-8-1984 from the APO to the Station Suptd. Barabanki on the representation of the workman working as substitute porter under S. S. Lucknow. In the letter it was stated that the workman had been posted to work against day to day casualties/vacancies. It was further stated that he had passed a medical examination in category A-2 vide memo No. 056593, dated 14-3-1984. His date of birth was given as 10-2-1958 and it was also stated that he had worked prior to 1-6-1978. Copies of these letters were endorsed to Station Suptd. Lucknow for information with a direction to send all the documents concerning workman to the Station Suptd. Barabanki, the workman, Sr. DAO and Suptd. Pay Bill.

10. This fact that the workman had worked as a substitute porter at Lucknow railway station prior to his posting at Barabanki has even been admittedly the management in para 8 of the written statement. In the said para of the written statement it has been pleaded by the management that between 16-1-1984 to 13-8-1984 the workman had worked at Lucknow railway station as a substitute porter for 137 days. In his cross examination, the workman has deposed that at Lucknow railway station he had worked for 200—250 days. The question is not as to for how many days he had worked as substitute porter at Lucknow Rly. Station. The fact which is of importance is that it is even admitted to the management that he had worked as a substitute porter at Lucknow Rly. Station.

11. When this fact that he had worked as substitute porter for some time at Lucknow Railway Station, is not in dispute, I fail to understand why SS Barabanki demanded proof of his previous working from the workman. Had he received any report from any corner that he had not actually worked there. There is no such evidence on record from the side of management. If at all the SS Barabanki had any doubt about it, he should have referred the matter either to the SS Lucknow or to the APO, DSO Office Lucknow. Only after he had been informed by them that he had not worked there before that. To me therefore, the have asked the workman to produce the proof of his previous working. Even now there is no cogent and reliable evidence from the side of the management to show that he had not worked there before that. To me therefore, the evidence adduced by the Union appears to be more reliable than the evidence of the management. In these hard days when it is difficult to get jobs, it is difficult to believe that a person properly engaged would leave the job of his own. The said question could have arisen only if the workman had found some where else a better job for which we have no evidence on record. The workman lost no moment to press his claim and move the DSO by means of a complaint photo copy of which he has filed on the date on which he was cross examined by management's authorised representative. These also appears to be no force in the plea raised by the management that the appointment of the workman was against the bar imposed on recruitment of fresh casual substitute labour. From annexure 4 to the affidavit of the workman it is clear that he had worked prior to 1-6-1978. This fact has been alleged by the Union in the rejoinder and by the workman in his affidavit also. Therefore, the bar to which the authorised representative for the management has pleaded has no application to the facts of the present case.

12. It is now admitted fact that during the period of 12 months prior to his termination workman had worked for more than 240 days. There is also no dispute on the fact that at the time of termination no notice or notice pay and

retrenchment compensation was paid to the workman. Therefore, on account of non compliance of the provisions of section 25-F I. D. Act, the termination of his services is held as void abinitio.

13. The normal relief to which the workman should be entitled is of reinstatement with full back wages. However, in the instant case it has been pleaded by the management that his vacancy had been filled up by a regular panel hand. There being no vacancy, reinstatement should not be ordered.

14. Looking to the facts and circumstances and the dubious manner in which his services were terminated, I see no sufficient reason not to reinstate the workman. The management can transfer the person who has been posted in his place and reinstate the workman as a substitute porter at Barabanki.

15. Held that the termination of the services of Shri Wazi Ahmed son of Shri Shafi Ahmed w.e.f. 18-9-1985 is illegal and unjustified. Consequently he is held entitled to reinstatement with fullback wages and all consequential benefits.

16. The reference is answered accordingly.
Dated : 17-1-1990.

ARJAN DEV, Presiding Officer.
[No. I-41012/12/87-D. II (B)]

का. अ. 489--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्र सरकार केन्द्रीय वाटर कमिशन, फ्लाड फोरकास्टिंग डिवाजन अहमदाबाद के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचवट की प्रकृति करना है, जो केन्द्र सरकार को 25-1-90 को प्राप्त हुआ था।

S.O. 489.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Water Commission, Flood Forecasting Division, Ahmedabad and their workmen, which was received by the Central Government on 25-1-90.

ANNEXURE

BEFORE SHRI C. G. RATHOD PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, AHMEDABAD
Reference (ITC) No. 14 of 1987

ADJUDICATION

BETWEEN

Central Water Commission, Central Flood Forecasting Division, Ahmedabad.

AND

The workmen employed under it.

In the matter whether the action of the management of Central Water Commission, Central Flood Forecasting Division, Ahmedabad, in terminating the services of Shri Nandubhai Prahlad Nayak w.e.f. 17-2-84 is legal and justified? If not, to what relief is the workman entitled to?

APPEARANCES:

Shri Bhargav Joshi—for the concerned workman.
Shri Z. K. Saiyed—for the Water Commission.

AWARD

By an order No. I-42012/12/87-D. II (B) dated 16th February, 1990, Government of India, Ministry of Labour, New Delhi, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10

of the I.D. Act, 1947, has referred the dispute between the management of Central Water Commission, Central Flood Forecasting Division, Ahmedabad and their workmen to the Presiding Officer, Industrial Tribunal, Ahmedabad. The dispute referred to is as shown in the Schedule and it is as under:

"Whether the action of the management of Central Water Commission Central Flood Forecasting Division, Ahmedabad, in terminating the services of Shri Nandubhai Prahlad Nayak w.e.f. 17-2-84 is legal and justified? If not, to what relief is the workman entitled to?"

The above dispute was originally referred to the Presiding Officer, Industrial Tribunal, Ahmedabad and it was subsequently placed before this Tribunal for adjudication.

2. In the present reference, the second party—Nandubhai Prahladbhai Nayak has filed the statement of claim at Ex. 3 and briefly it is as under: that Shri N. P. Naik was working as Work-charge driver with the first party—Central Water Commission from 20-7-78; that he was doing his duties honestly and diligently and that there was no grievance against his service which he has referred and that his work was satisfactory. It is further stated in the statement of claim that even though the concerned workman discharged his duties satisfactorily he was discharged from the service by an order dt. 17-2-84. It is further stated that he was discharged from the service without any sufficient ground and without holding any departmental inquiry. He has, therefore, approached the Labour Commissioner. He had issued a failure certificate but it did not reach him. He then again approached the Labour Commissioner's office and also filed a Special Civil Application No. 4336 of 1986 in the Hon'ble High Court, and thereafter, this reference was referred to this Tribunal. It is further contended that the action of the Management in terminating his services on 17-2-84 was illegal and improper and against the principles of natural justice; that it is also against the provisions of Section 25-F of the I.D. Act and, therefore, it is prayed that the first party be directed to withdraw the said order and reinstate the concerned workman with continuity of service and be paid the wages for the intervening period and that the cost of Rs. 1500 be paid to the concerned workman as costs of this reference.

3. In the present reference, though the Central Water Commission received the notice, they did not remain present and, therefore, the matter was proceeded ex-parte and an order was passed on 30-6-87 allowing the reference, and the concerned workman was reinstated with continuity of service and with full back wages. It appears that since the ex-parte award was passed, the Central Water Commission filed Miscellaneous Application No. 1 of 1987 to set aside the said award and that the matter be heard on merits. It was allowed by June, 1987, and it was ordered that the matter be expedited.

4. In the meantime, the Central Water Commission gave an application at Ex. 12 contending, inter alia, that the Central Water Commission is a department of Geological Survey of India and that it is not an industry and, therefore, the Industrial Dispute Act is not applicable. In this connection, I have heard the learned advocates on both the sides and held by an order at Ex. 17 dated 25-11-87 that the Central Water Commission was covered under the definition of industry and the dispute can be said to be an industrial dispute and that the I.D. Act was applicable.

5. The said order was challenged before the Hon'ble High Court by filing a Special Civil Application No. 51 of 1988. The interim stay of proceeding was granted and finally, the Hon'ble High Court observed "we do not desire to interfere at this interim stage. It will be open to the petitioners to contest this finding in the main proceedings after the reference is disposed of and therefore, reject the petition and vacate the interim relief."

6. After the aforesaid order was passed that the Central Water Commission filed a written statement at Ex. 22 and it is contended as under: that the first party—Central Water

Commission does not come within the provisions of I.D. Act and that the main object of the Central Water Commission is only to make research of water, and it has no relation with water or its usage and work pertaining to it. It is contended that it is not an industry and is exempted from section 2(j) of the I.D. Act. It is further contended that the services of Shri Nandubhai Prahladbhai Nayak was terminated with effect from 17-2-84; that his termination was mainly due to the fact that his character and antecedent was not found satisfactory as reported by the District Magistrate, Gandhinagar, vide their letter No. DC, POL/C&A Var./WS/202/2782/83 dated 13-2-84. It is further contended that Shri N. P. Nayak had suppressed material information and had even furnished false information in Attestation forms in Col. 12(1)(a) to (d) is evident from the remarks of the District Magistrate. It is further stated that in the circumstances it was not possible to hold a formal enquiry against Shri Nayak in terms of Rule 14 of the C.C.S. (CCA) Rules unless police officers in charge of the investigation were called as witness which was considered undesirable and action to terminate his service was taken under rule 19(ii) of the C.C.S. (CCA) Rules. It is further contended that this was also in accordance with the terms of appointment given to Shri Nayak at the time of his initial appointment. It was further contended that he was neither declared as Semi Permanent nor permanent till the day of his termination of service and was only a temporary Work-charge employee. Further, it is contended that Shri Nayak had accepted the terms and conditions of the appointment as he joined this department on 20-7-78. So also he has contended that during the tenure of service w.e.f. 20-7-78 as Workcharge Driver in this Division, the services of Shri Nayak were found far from satisfactory. It is contended that the copies of the letters are appended as per Annexure—IV, V, VI, VII, VIII and IX to also it is contended that as required under the rules, steps were taken to get the character and antecedents of Shri Nayak verified and that the incumbent was repeatedly requested orally from time to time since the date of his joining to complete/fill up the requisite attestation forms and when he did not comply with the oral request he was asked in writing to do so by letters dated 19-7-82 and 31-8-82, Appx. X and Appx. XI. It is further contended that in spite of this he went on avoiding/hesitating to submit the same for a long time and finally submitted the attestation forms only on 22-6-83. It is further contended that in the meantime, a letter No. CB/Application/870/1982 dated 30-6-82, from Police Inspector, Local Crime Branch, Gandhinagar which contains a specific recommendation that it is not desirable to continue him in Government service was received. This office, however, did not take any action as recommended at that stage presumably pending verification of character and antecedents by the District Magistrate, Gandhinagar. The verification report was received on 16-2-84 appended as Annexure II. Further, it is contended that on receipt of this communication there was no further alternative left to retain him in Government service as per rules and his services were terminated vide office letter dated 17-2-84; that the said termination of the opponent employee is just legal and valid and that the opponent employee is not entitled to be reinstated in service or any other benefit and in that view of the matter, there is no merit and hence the same deserves to be dismissed.

7. After the aforesaid written statement was filed, the Asstt. Government Pleader gave an application at Ex. 25 praying, inter alia, that the inquiry could not be held against Shri Nayak for his alleged misconduct and that the said inquiry is necessary to be held and hence the Central Water Commission may be permitted to hold such an inquiry before the Court. This was seriously objected to as per Ex. 26 and finally, the amendment was allowed as per the order at Ex. 28. Thus it may be stated that the Central Water Commission was permitted to amend its written statement and by this amendment, they were permitted to prove the charge.

8. After this amendment, I had recorded the evidence of Shri D. K. Vora, Executive Engineer in Mohi Canal, residing at Surat, vide Ex. 32 and further recorded the evidence of Shri Nandubhai Prahladbhai, vide Ex. 51, the concerned workman

9. In the aforesaid statement the point referred to is whether the action of the Management of Central Water Commission in terminating the services of Shri N. P. Nayak w.e.f. 17-2-84 is legal and justified and further question that is referred to is, if not, what relief the concerned workman is entitled to. It is necessary to refer to the appointment order vide Ex. 36, page 7. By this appointment order, Shri Nayak was appointed as Workcharged Driver on the pay of Rs. 260 per month in the scale of Rs. 260-6-326-EB-8-350 w.e.f. 20-7-78 FN. Thus there is no dispute that the concerned workman was working as a driver since 1978 and it appears that he has worked continuously since the year 1978 and was terminated by an office order, vide Ex. 37, dated 17-2-84. By this order, it is stated as under :

"The services of Shri Nandubhai Prahladbhai, Nayak, W/C Driver are hereby terminated as he is no longer required by this office. He stands relieved with effect from 17-2-1984 A.N."

It thus appears quite clear that the aforesaid termination of Shri N. P. Nayak was a simply termination. Mr. D. K. Vora, vide Ex. 32 has also admitted in his cross examination that this termination was discharge simpliciter; that no show cause notice was given to Shri Nayak before he was terminated and that reasons are also not stated in the termination order. Now if the Management wanted to terminate the services of Shri Nayak as above, they could not have terminated his services as above except following the provisions as contained in 25F of the I.D. Act as the concerned workman has continuously worked for a period of one year or more and has worked for 240 days or more and therefore he could be said to be in continuous service as per Sec. 25-F of the I.D. Act, he can only be retrenched as per Sec. 25-F of the I.D. Act, he can only be retrenched by giving him one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice. Further it appears that no such notice has been given in this case nor he has been paid wages for such notice period and he has not been given retrenchment compensation as contemplated in 25-F, Clause-B of the I.D. Act, which, inter alia, provides for payment of fifteen days pay for every completed year of continuous service. Therefore prima facie, it is clear that the termination as above was bad.

10. However, the Central Water Commission has now tried to lead some evidence to show that the charges against him stand proved. It is stated, in the first place, that in filling the form which he was required to fill as at Ex. 41 known as Attestation Form, he was required to answer the question as to whether he has ever been convicted by a court of law for any offence and the answer given by him was 'No'. It is stated that the concerned workman has not given correct information so far as this 'Attestation Form' is concerned. It is also contended that in fact, he has not filled in this form initially and that he had given this form afterwards in June, 1983 and when he has given this form, there was a report of the Police Inspector of Local Crime Branch, Gandhinagar, vide Ex. 40 that a number of prohibition and gambling cases were pending against him as stated in the said letter. Now, it is true that the report of the Police Inspector, Local Crime Branch, shows that the concerned workman was involved in a number of prohibition cases and gambling cases as stated therein. But Mr. Nayak, the concerned workman states in his evidence

that in all those cases, he has been acquitted and that the false cases were lodged against him for possessing the liquor, but he was acquitted. No evidence has been led to show that the information which he gave was an incorrect one. Moreover, the information that was required was, perhaps, with regard to the period before he actually joined the service in 1978.

11. But in any case of the matter, the department has not been able to prove that he was involved in any particular case and that the case was proved against him. Again it is stated that in view of the report of the District Magistrate that the District Magistrate has endorsed the report submitted by the District Superintendent of Police, he has stated by

Ex. 39 dated 13-2-84, that he had agreed with the opinion of the District Supdt. of Police, Ahmedabad, Rural and Gandhinagar. The District Supdt. of Police has stated vide his confidential letter dated 1-12-83 that the concerned workman was involved in Adalat Police Station Prohi. C.R. No. 288/82, 77/83 and 117/83 u/s. 66(B) of Prohibition Act, 1949 and that he was also prosecuted under the Adalat Police Station N.C. No. 17/83 u/s. 93 of the Prohibition Act.

12. Now, P.I. Local Crime Branch, has reported vide Ex. 40 that Mr. Nayak was involved in the following Prohibition and Gambling cases :

1. CR No. 66/81 u/s. 66b 81 Proh. Act.
2. „ 149/81 „ „ „
3. „ 172/81 „ 85(u)(3) 66-1-b Proh. Act.
4. „ 165/79 „ 66-1B
5. „ II 44/81 „ 504, 506, 523, 427-114 IPC.
6. „ II 90/81 Gambling, Act 12.
7. „ II 102/81 „ „
8. „ II 36/82 u/s. 504, 506-114 IPC.
9. „ Criminal Case No. 26/82 u/s. 107 C. P.C.”

13. Now inspite of this, the department has not shown that the concerned workman was, in fact, convicted in any of these offences. The concerned workman has stated in his evidence that in all the cases, he was acquitted and it, therefore, appears that the Central Water Commission as not been able to show by leading proper evidence by the examination of the Police Officers with necessary record that the concerned workman was involved in these cases and that it resulted in his conviction.

14. In the written statement filed by the Central Water Commission at Ex. 22, it was contended that the services of Shri N. P. Nayak was terminated mainly due to the fact that his character and antecedents was not found satisfactory as reported by the District Magistrate, Gandhinagar. It is also stated that it was not possible to hold a formal inquiry against Mr. Nayak in terms of Rule 14 of the CCS CCA rules unless Police Officers In-charge of the investigation were called as witness which was considered undesirable and action in terminating his services was taken under rule 19(ii) of the CCS CCA Rules. It is also stated therein that this was also in accordance with the terms of the appointment given to Shri Nayak at the time of his initial appointment.

15. Now it may be noted that if we look into Rule-14 of the CCS CCA rules, it is clear that it clearly provides that no order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850, where such inquiry is held under that Act. Now looking to the penalties as specified in clauses (v) to (ix), it is clear that the said rule specifies the major penalties and it is clear that removal from service is a major penalty. Therefore, it is clear that the Central Water Commission should not have imposed such a penalty except after inquiry as in the management provided in Rule 14 and 15 of the said Act. There is no doubt that no such inquiry has been held in this case. Now the Central Water Commission has relied on rule 19(ii) of the said Rules and it, inter alia, provides that where the disciplinary authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules. Nothing has been pointed out to me that the disciplinary authority in this case was satisfied for reasons to be recorded in writing that it was not reasonably practicable to hold an inquiry in the manner provided in these rules. The office order annexed alongwith the statement of claim at Ex. 8 clearly shows that it merely mentions the services of Shri Nandubhai Parabhladhbhai Navak, W/C Driver are hereby terminated as he is no longer required by the said office and he stands relieved with effect from 17-2-1984 A.N. Thus clearly the Central Water Commission has not recorded any reasons in

writing that it was not possible to hold an inquiry as provided in the rules. Since the recording of reasons for not holding the inquiry is a mandatory provision, which has not been complied with in this case, there is no other alternative but to hold that the inquiry was vitiated.

16. Further, as stated earlier, even assuming that Rule—19(i) applies in this case, then also as stated earlier, there is nothing to show that in the cases referred to in para-12 of the award, there has been any conviction and in that view of the matter, it is clear that rule—19(i) also will not apply in such a case as on reading the rule, it is clear that the penalty can only be imposed when a Government servant on the ground of conduct which has led to conviction on a criminal charge. It, therefore, appears to me that the said rule is also not applicable and that the termination is, therefore, bad. It may also be mentioned that though the Central Water Commission was permitted to prove the charge as above, the Central Water Commission has not led any evidence except producing a document at Ex. 36. No doubt, the memos at Exs. 44, 45 and 46 appear to have been sent to the concerned workman, but there is nothing to show that these memos actually were served upon the concerned workman and in any case that does not justify the penalty of termination of service without following the due procedure for terminating his service.

17. It cannot be urged in this case that he was merely a Work-charge employee. It appears that he has been working continuously since 1978 and since he has worked continuously for not less than one year as defined u/s 25(B) of the I.D. Act, his services could not have been terminated without following the legal procedure as contemplated u/s. 25-F of the I.D. Act and as discussed above, since no such notice has been served upon and since he has not been paid retrenchment compensation, his termination is clearly bad and further it may also be stated that even in the Court, the Management has not succeeded in proving their case against the concerned workman.

18. In the circumstances, it may be stated that though this reference is of the year 1987, there has been a considerable delay in disposing of this reference in view of the fact that initially the reference was proceeded ex-parte. The award was passed in June, 1987 and the Central Water Commission thereafter submitted an application to set aside the said award as ex-parte orders were passed thereon. It was thereafter set aside and thereafter the question as to whether the work carried out by the Central Water Commission is not an 'industry' was agitated by the Management; that issue was negatived by an order dated 25-11-87. The Management moved the Hon'ble High Court and thereafter after the orders of the Hon'ble High Court were received in Special Civil Application, the parties proceed with the matter, but as the Central Water Commission has given an amendment application as at Ex. 25, it was disposed of after hearing the learned advocates and thereafter the evidence was recorded and there has been delay on account of the request made by the parties and hence the matter could not be disposed of earlier. In the result, I pass the following order :

ORDER

The reference is allowed. The action of the Management—Central Water Commission in terminating the services of Shri N. P. Nayak is held as not legal and justified and as such, Shri N. P. Nayak is liable to be reinstated with continuity of service and full back wages.

The Management shall comply with the order of reinstatement and payment of back wages within two months of the publication of this award. In the circumstances, no order as to costs.

Ahmedabad, 11th January, 1990.

Sd/-

C. G. RATHOD, Presiding Officer
[No. I-42012/43/84-DII(B)]

नई दिल्ली, 6 फरवरी, 1990

का.आ. 490—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिब्बोजनल इंजिनियर टेलीग्राफ स्वाई माधोपुर के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करना है जो केन्द्रीय सरकार को 31-1-90 को प्राप्त हुआ था।

New Delhi, the 6th February, 1990

S.O. 490.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Engineer Telegraph, Swai Madhopur and their workmen, which was received by the Central Government on 31-1-1990.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण जयपुर

उपस्थिति :- माननीय न्यायाधीश श्री प्रताप सिंह पांडव

(आर. एच. जे. एम.)

सं. आई. टी. 58/88

मध्य

1. चेतन प्रकाश
2. बाबू लाल
3. भोम प्रकाश
4. चौध मस

श्रमिक गण

बनाम

डिब्बोजनल इंजिनियर टेलीग्राफ, स्वाई माधोपुर, हैड क्वार्टर पुर्न कोटा वर्तमान स्वाईमाधोपुर

प्रार्थी

रेफरेंस :- अनुबंध धारा 10 (1) (घ) एवं उप धारा (2) औद्योगिक विवाद अधिनियम 1947,

उपस्थिति :- 1. श्री मान सिंह गुप्ता

2.

3 दिनांक 19-8-89

प्रवाद

श्रम मंत्रालय भारत सरकार के डेप्टी अधिकारी ने उसके आदेश संख्या एल-40011/9/87-बी-11-(बी) दिनांक 5-8-88, निम्न विवाद अनुबंध धारा 10(1)(घ) औद्योगिक विवाद अधिनियम 1947 जिते तत्पश्चात् अधिनियम मित्रा जायेगा, निम्न विवाद वास्ते अधिनियम प्रस्तुत किया।

“क्या प्रार्थीय अधिनियम (टेलीग्राफ) स्वाई माधोपुर (मूडालय कोटा) द्वारा नेमितिक कर्मचारियों सर्व श्री चेतन प्रकाश सूखालके, भोम प्रकाश, बाबू लाल और चौधमल को 1-7-87 से सेवाएं समाप्त करना स्वीकृत है? यदि नहीं, तो यह कर्मकार किन अनुतोष के हकदार हैं?”

बाद प्राप्ति निदेशन रेफरेंस को पंजीकृत किया गया और नोटिस उभय पक्षों को जारी किया गया। और श्रमिक की ओर से स्टेटमेंट आफ क्लेम निम्न प्रकार से प्रस्तुत किया गया।

1. यह कि श्री चेतन प्रकाश सूखालके, के प्रथम नियुक्ति 19 सितम्बर, 1985 को 11.00 रुपये प्रतिदिन दैनिक भू मजदूरी पर की गई। उसने कार्य नहीं किया जो निर्दिष्ट था। ग्रुप के कर्मचारी करने थे। चेतन

प्रकाश को 1 दिसम्बर, 1985 से 13.00 रुपये प्रतिदिन के हिसाब से सेवा देना था किया गया। चेतन प्रकाश की सेवाएं 30 जून, 1987 तक निरन्तर रही। और इस अवधि पर संख्या एक में दिये गये वर्णन के मुताबिक श्रमिक चेतन प्रकाश ने 545 दिन कार्य किया। श्रमिक चेतन प्रकाश की सेवा मौखिक आदेश के द्वारा अवैध रूप से समाप्त कर दी।

2. श्री बाबू लाल श्रमिक की प्रथम नियुक्ति 22-12-85 को 11.00 रुपये प्रतिदिन मजदूरी पर की गई। श्रमिक बाबू लाल को एक दिसम्बर 1986 से 13.00 रुपये में प्रतिदिन देना नव किया। श्री बाबू लाल के सेवाएं 30-6-87 तक निरन्तर रही। बाबू लाल ने कुल 467 दिन कार्य किया। श्री बाबू लाल की सेवा मौखिक आदेश के द्वारा अवैध रूप से समाप्त कर दी।

3. श्री भोम प्रकाश श्रमिक की प्रथम नियुक्ति 1-9-85 को 11.00 रुपये प्रतिदिन के हिसाब से की गई एक तो उसने कार्य नहीं किया जो था। ग्रुप के कर्मचारी कार्य करते थे। प्रार्थी श्रमिक भोम प्रकाश को 1 दिसम्बर 1986 से 13.00 रुपये प्रतिदिन के हिसाब से देना तय किया और उसकी सेवाएं 30 जून 1987 तक निरन्तर रही, उस अवधि में उसने कुल 532 दिन कार्य किया। प्रार्थी श्रमिक भोम प्रकाश की सेवाएं जारी मौखिक आदेश 1-7-87 से समाप्त की गई।

4. चौध श्रमिक चौधमल की प्रथम नियुक्ति 6 दिसम्बर 1985 को 11.00 रुपये प्रतिदिन के हिसाब से की गई, किन्तु वही कार्य किया जो निर्दिष्ट था। ग्रुप के कर्मचारी कार्य करते थे। श्रमिक चौधमल को 1-12-86 से 13.00 रुपये प्रतिदिन के हिसाब से देना तय किया और उसकी सेवा 30 जून 1987 तक निरन्तर रही। उसने इस दौरान में कुल 465 दिन कार्य किया और दिनांक 1-7-87 को मौखिक आदेश के द्वारा अवैध रूप से समाप्त की गई।

यह कि श्रमिकगण को सेवाएं बिना एक माह का नोटिस बिना अवधि बिना नोटिस अवधि का चेतन दिये रिटर्नमेंट धारा 25 एक. अधिनियम के उल्लंघन में की गई। यह भी आरोप लगाया कि स्टेटमेंट आफ क्लेम के पैरा संख्या 5 में 21 वर्णित लोगों को जो उनसे कनिष्ठ थे, सेवा में रखते हुए उन्हें सेवा मुक्त किया गया। इस प्रकार धारा 25 (घ) का भी उल्लंघन किया गया।

आगे यह भी ऐतबार लिया कि प्रार्थी श्रमिक को न तो रिटर्नमेंट कम्पेंसेशन दिया।

अन्त में प्रार्थना की कि प्रार्थीश्रमिक गण को पुनः सेवा में पवस्थापित किया जावे और प्रार्थी को जब तक कि श्रमिकगण को कार्य पर न लेंगे वही चेतन पर 12 प्रतिशत ब्याज दिवाने का आदेश दिया जाये। दिनांक 15-4-79 को नियोजक के बाबजूद अवसर दिये जाने के उपस्थित न आने काहूण उसके बिना एक पक्षीय कार्यवाही दिये जाने का आदेश पारित किया गया। तत्पश्चात् दिनांक 2-5-79 को भी बिपक्षी नियोजक उपस्थित न आने के कारण प्रार्थी श्रमिक गण को एक पक्षीय सक्ष्य पेश करने का अवसर दिया गया। प्रार्थी गण को और से प्रार्थी बाबू लाल आत्मज भंवर मान कलाल ने स्टेटमेंट आफ क्लेम की सम्पुष्टी में अपना पक्ष पत्र प्रस्तुत किया। जिते न्यायाधिकरण द्वारा स्थापित किया गया।

न्यायाधिकरण के समय विचारणीय प्रश्न यह है कि प्राया प्रार्थी श्रमिक गण चेतन प्रकाश, सूखालके, श्री बाबू लाल, चौधमल, भोम प्रकाश दिनांक 1-7-87 से पूर्व एक क्लेकडर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाले औद्योगिक कर्मकार हैं। गये थे।

प्राया उनकी सेवा समाप्ति धारा 25 एक औद्योगिक विवाद अधिनियम की वह से अवैध छूटने की।

प्रायी श्रमिकगण क्या अनुतोष पाने के अधिकारी हैं। उपरोक्त प्रश्नों का पेश गूढ़ा सक्ष्य की वह से नियमित किया जाना उचित होगा।

विकारणीय बिन्दु संख्या एक :—यह बिन्दु प्रार्थी श्रमिकगण की सेवा समाप्ति से पूर्व एक क्लेयर वर्ष में 240 दिन से अधिक निरन्तर कार्य किया। औद्योगिक कर्मकार होगा, के सम्बन्ध में है। इस सम्बन्ध में श्री बाबू लाल श्रमिक श्री भंवर लाल के शपथ पत्र से विदित है कि प्रार्थी श्रमिक चेतन प्रकाश ने दिनांक 19 सितम्बर 1985 को बतौर दैनिक मजदूर के रूप में कार्य किया। उसने 30 जून 1987 तक निरन्तर कार्य किया और 1-7-87 को मौखिक आदेश में उनकी सेवा समाप्ति की गई। बाबू लाल के शपथ पत्र से प्रार्थी श्रमिक श्री भोम प्रकाश के सम्बन्ध में यह तथ्य प्रमाणित हुये हैं कि श्री भोम प्रकाश को प्रथम नियुक्ति 1 सितम्बर 1985 को बतौर दैनिक मजदूर की गई और उसकी सेवा समाप्ति की मौखिक आदेश 1-7-87 से की गई। उसने कुल 531 दिन कार्य किया। आगे बाबू लाल के शपथ पत्र से यह प्रमाणित हुआ कि चौथमल की प्रथम नियुक्ति बतौर दैनिक चेतन शोनी कर्मचारों के रूप में 8 अक्टूबर, 1985 को विपक्षी संस्थान ने 11.00 रुपये प्रतिदिन के हिसाब से की गई और उसकी सेवा समाप्ति 1-7-87 को मौखिक आदेश से की गई। चौथमल ने कुल 465 दिन कार्य किया। श्री बाबू लाल की साथ यह स्पष्ट है कि 30 जून, 1987 से पूर्व एक वर्ष में चेतन प्रकाश ने 318 दिन कार्य किया। बाबू लाल के शपथ पत्र से यह भी प्रमाणित हुआ कि उसकी सेवा समाप्ति 30 जून 1987 में एक वर्ष पूर्व कुल 321 दिन कार्य गणना प्रमाणित करना होता है। उसके प्रतिरिक्त भोम प्रकाश की सेवा समाप्ति 30 जून 1987 से एक वर्ष पूर्व में 299 दिन कार्य किया। प्रार्थी श्रमिक चौथमल की सेवा समाप्ति बाबू लाल के शपथ पत्र से 30 जून 1987 के मौखिक आदेश द्वारा की जाना प्रमाणित होता है। एक क्लेयर वर्ष में 250 दिवस में कार्य किया जाना प्रमाणित होता है। बाबू लाल श्रमिक की साक्ष्य से यह बेहतर प्रमाणित होता है। प्रार्थी श्रमिकगण चेतन प्रकाश, बाबू लाल, भोम प्रकाश, चौथमल ने उनकी सेवा समाप्ति से पूर्व एक क्लेयर वर्ष में 240 दिन से अधिक कार्य किया और यह इस प्रकार निरन्तर कार्य करने वाले कर्मकार हो गये थे, इसलिए प्रथम बिन्दु प्रार्थी श्रमिकगण के पक्ष में निश्चित किया जाना है।

दूसरा विवाद बिन्दु उनकी सेवा समाप्ति अवधि छंटनी होने के सम्बन्ध में है। बाबू लाल की साथ यह बेहतर प्रमाणित हो गया है कि चारों श्रमिकगण की सेवा समाप्ति बिना एक माह का नोटिस दिये, ब बिना एक माह का वेतन नोटिस अवधि के बंदी दिये जाने के प्रार्थी गण की सेवा समाप्ति की गई, न ही उनका छंटनी का भुगतान दिया गया न ही केन्द्रीय सरकार को इस प्रकार की सेवा समाप्ति की सूचना दी गई। ऐसी सुस्त में प्रार्थी श्रमिकगण की सेवा समाप्ति का दिनांक 1-7-87 धारा 25 एफ. औद्योगिक विवाद अधिनियम किये जाने से अर्द्ध छंटनी की संज्ञा में आती है। जहाँ प्रार्थी श्रमिक गण की छंटनी धारा 25 एफ. अधिनियम के उल्लंघन में की गई है। वहाँ प्रार्थी श्रमिकगण पुनः सेवा में वेतन सहित बहाल होने के अधिकारी पाये जाते हैं अतः पक्ष।

चूंकि प्रार्थी श्रमिक गण बाबू लाल की साथ से चारों प्रार्थी श्रमिक गण की छंटनी धारा 25 एफ. अधिनियम के उल्लंघन में की जाना माना जाता है इसलिए चारों श्रमिक गण अर्द्ध छंटनी के कारण सेवा में निरन्तर होना माना जावेगा। अतः प्रार्थी गण के पक्ष में पंचाट इस साक्ष्य का धारित किया जाता है कि : यह कि प्रमाणित अभियन्ता के टेक्निक (सवाई माधोपुर मुख्य कोटा द्वारा नैमित्तिक कर्मकारों सर्व श्री चेतन प्रकाश, चौथमल, भोम प्रकाश, बाबू लाल और चौथमल की सेवा समाप्ति की एक 1-7-87 को अवधि एवं अनुचित तौर से की गई चारों श्रमिकगण पुनः सेवा में बहाल होने के अधिकारी माने जाते हैं। प्रार्थी श्रमिकगण को दिनांक 1-7-87 से बहाल किये जाने की विधि तक निरन्तर सेवा में माना जावेगा। उन्हें सेवा समाप्ति से पूर्व तय वेतन पर बहाल किया जाता है। सेवा से हटाने से समाप्त सेवा में बहाल किए जाने की विधि के दौरान अन्य कोई बात भी ध्यान दिये वे को प्राप्त करने के अधिकारी होंगे।

पंचाट की प्रतिलिपि निधि केन्द्रीय सरकार 17(1) औद्योगिक विवाद अधिनियम सेवा पावे।

प्रताप सिंह यादव, न्यायाधीश
[सं. एल-41011/9/87-डा. II(बा)]

का. प्रा. 491.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे, बीकानेर के प्रबंधन के सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार के 31-1-90 को प्राप्त हुआ था।

S. O. 491.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Bikaner and their workmen, which was received by the Central Government on 31-1-90.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 15/85

भारत सरकार, श्रम मंत्रालय नई दिल्ली को अधिसूचना सं. एल. 41012(15)/84 डा. II (बी) दि. 8-4-85 रेलवे केजुधल सेवर युनियन बीकानेर।

प्रार्थी युनियन

अनाम

1. डिवाइजियल रेलवे मैनेजर, उत्तर रेलवे, बीकानेर।
2. मण्डल श्रमिक अधिकारी, उत्तर रेलवे, बीकानेर।
3. स्टेशन मास्टर, उत्तर रेलवे, स्टेशन पूषोराजपुर जिला गुजरातर।

प्रार्थी नियोजक

उपस्थिति

माननीय श्री प्रताप सिंह यादव, भार. एच. जे. एस.

प्रार्थी युनियन का अंत में

श्री भरत सिंह चौधरी

प्रार्थी नियोजक की ओर से

श्री धने सिंह

दिनांक अक्टूबर :

15-4-89

प्रवाद

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त अधिकारों ने उनकी अधिसूचना संख्या एल. 41012(15)/84 डा. II बी. दिनांक 8-4-85 के द्वारा निम्न विवाद अंतर्गत धारा 10(1)(घ) अधिका उपधारा 2(क) औद्योगिक विवाद अधिनियम 1947 जिसे सत्यवात अधिनियम लिखा जाएगा, यन्त्र अधिनियमार्थ इस न्यायाधिकरण को प्रेषित किया है :

"Whether action of Divisional Railway Manager, Northern Railway Bikaner interminating the services Shri Mahendra Kumar casual labour, is justified and legal. If not, to what relief he is entitled to?"

बाद प्राप्ति निर्देशन इसे हट यायाधिकरण में पंजीत किया गया और उक्त पक्षकारान को नोटिस जरिए पंजीकृत थाक नजे गए। रेलवे केजुधल सेवर युनियन जिसे प्रार्थी युनियन लिखा जाएगा, के बाईस प्रसिद्धे न स्टेटमेंस थाक क्लेम निम्न प्रकार पेश किया :—

13 जून 1981 को रेलवे स्टेशन पृथ्वीराजपुर जिला गंगानगर में बनौर कैम्पबल नेबर के नियुक्त हुआ और 120 दिन से अधिक लगातार काम करने के आधार पर आध्यात्मिक रेल कर्मचारों का स्टेशन पाने का अधिकारी हो गया। तत्पश्चात् प्राप्ति ने पृथ्वीराजपुर स्टेशन पर 14-9-81 तक कार्य किया और यह औद्योगिक कर्मचारों का था। आगे व्यक्त किया कि कर्मचारी एक कलैण्डर वर्ष में 240 दिन से अधिक कार्य करने के आधार पर लगातार काम करने वाला औद्योगिक कर्मचारों हो गया। यह कि कर्मचारी की सेवा स्टेशन मास्टर पृथ्वीराजपुर ने दिनांक 14-9-81 के दोपहर बाद मौखिक रूप से टर्मिनेट कर दी। जो आरोप लगाया कि अनाधिकृत रूप से टर्मिनेट की। आगे व्यक्त किया कि अधिनियम व उसके अंतर्गत नियमों के तहत प्राप्ति अधिकारी का नियोजक डिप्टी जनरल रेलवे मैनेजर बीकानेर एवं मण्डल कानून अधिकारों बीकानेर है और इन नियोजकों ने कर्मचारी को टर्मिनेट नॉटिफिकेशन नोटिस देना अथवा टर्मिनल आदेश नहीं दिया था। यह भी एतराज लिखा कि इस कर्मचारी की सेवा समाप्त करते समय पहले आए पंछे जाए के सिद्धान्त का पालन नहीं किया गया। कर्मचारी से सम्बन्धित करीब 25 सूची घोषित नहीं की गई और कर्मचारी से कनिष्ठ कर्मचारियों की सेवा में वापस रखने हुए उसकी सेवा समाप्त की गई। भारत सरकार को निर्धारित काम पर कोई सूचना इस बाबत नहीं दी गई। अतः प्राप्ति का कि कर्मचारी के हक में आदेश इस प्रकार पारित करने का आदेश जारी किया जावे कि इस कर्मचारी की सेवा दिनांक 14-9-81 से वापस दोपहर से टर्मिनेट का कार्यवाही अनुचित अवैध एवं अनाधिकृत होने से निरस्त करने और जब तक अवधि का प्रत्येक 196-232 का पूरा वेतन भत्ता भी दिया जाये।

डिप्टी जनरल पर्वन्त आफिजर ने रेलवे की ओर से स्टेटमेंट आफ क्लेम का उत्तर निम्न प्रकार पेश किया :

यह स्वीकार किया कि श्री महेन्द्र कुमार को 22-5-88 को बनौर गम मीसम के लिए वाटरमैन के तौर पर लगाया गया था। परन्तु इतने इन्तजार किया कि वह टेम्परेरी स्टेशन का प्राप्ति करने का अधिकारी हो।

इसके पश्चात् में यह स्वीकार किया कि श्री महेन्द्र कुमार ने 14-9-81 तक कार्य से किआ परन्तु वह बीच की अवधि में अनुपस्थित भी रहा। इस बात को नकारा कि वह एक औद्योगिक कर्मचारों है पैरा नं. तीन व कार का गलत होना वह बाद नकारा और इसे भी गलत होता कहा कि स्टेशन मास्टर पृथ्वीराजपुर ने जबानी तौर पर भी महेन्द्र कुमार की सेवाएं समाप्त कर दीं। श्री महेन्द्र कुमार नियत समय बीत जाने के बाद गम मीसम में पानी वाले के तौर पर काम करने वाला कहा। बन्द हो गया था। इस तथ्य को भी नकारा कि रेलवे स्टेशन पृथ्वीराजपुर के स्टेशन मास्टर ने अवैध रूप से महेन्द्र कुमार की सेवाएं समाप्त की। आगे यह भी प्ती की कि चूंकि महेन्द्र कुमार की सेवाएं बिल्कुल समाप्त नहीं की गई थी इसलिए उसकी नॉटिफिकेशन या नॉटिस अवधि का वेतन देने का प्रश्न नहीं उठता। इस प्रकार पहले आए पंछे जाए के सिद्धान्त का पालन करना और करीब 25 सूची जारी करने का भी प्रश्न नहीं उठता था। चूंकि श्री महेन्द्र कुमार की सेवाएं समाप्त नहीं की गई थी इसलिए उसे बहाल करने का प्रश्न नहीं उठता। आगे प्राप्ति के क्लेम को टाईम बॉर्ड होने का प्ती की और यह भी एतराज लिखा कि वह रिकॉर्ड कानून को दृष्टि में नहीं है और क्लेम में मिस्टर डी. आर. पार्टीज का नक्स आरिज होता है। महेन्द्र कुमार पंछे के पूरे वेतन सहित बहाल होने का अधिकारी नहीं है और उसके क्लेम को निरस्त किया जावे।

प्राप्ति युनियन की ओर से श्री महेन्द्र कुमार ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा स्थापित किया गया। रेलवे के योग्य अधिकारों ने प्राप्ति से जिरह की। महेन्द्र कुमार ने उसकी समुपस्थिति में श्री लक्ष्मीनारायण यादव पुत्र श्री मुकुन्द यादव को प्रस्तुत किया जिससे भी रेलवे के बकील के प्रतिरोक्षण किया।

रेलवे की ओर से श्री के. के. तन्वार ने अपना शपथ पत्र प्रस्तुत किया जिसे न्यायाधिकरण द्वारा स्थापित किया। प्राप्ति युनियन के अधिकृत प्रतिनिधि ने इस गव.ह से जिरह की एवं प्रेमचन्द पुत्र श्री लालनाराम पेश हुए जिससे श्री प्ररविन्द सिंह ने गव.ह से जिरह की और फिर श्री प्रेम चन्द से और मनीष जिरह की और उसकी जिरह सुनिश्चित रखी गई जो आईसा इगने रोज 30-9-88 को प्रतिरोक्षण पूरा हुआ। मैंने बहुत उच्च पक्षकारान मुनी है और पत्रावली का द्धानपूर्वक अवलोकन किया है। न्यायालय के समक्ष निचार्णय प्रश्न यह है कि

1- आया प्राप्ति महेन्द्र कुमार की सेवा समाप्ति में पूर्व क्या उसने एक कलैण्डर वर्ष में 240 दिन से अधिक निरन्तर कार्य कर लिया था और क्या उस पर धारा 25 एक अधिनियम के प्रावधान लागू होते हैं।

2- यदि नहीं तो क्या प्राप्ति महेन्द्र कुमार धारा 25 जो अधिनियम और औद्योगिक विवाद नियमों 1957 के नियम 77 का लाभ पाने का अधिकारी है।

3- अनुतोष : प्राप्ति क्या अनुतोष पाने का अधिकारी है।

उपरोक्त प्रश्नों को निर्णित करने के लिए हमें पत्रावली में आई साक्ष्य पर गौर करना है। प्रथम विचारणीय बिन्दु सेवा समाप्ति से पूर्व एक कलैण्डर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने के संबंध में है इस संबंध में श्रमिक की ओर से उसके स्टेटमेंट आफ क्लेम के पैरा 3 में यद्यपि यह अभिवक्त रखा गया है 'वह है कि कर्मचारी एक कलैण्डर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करने वाला औद्योगिक कर्मचारों हो गया।' अप्राप्ति रेलवे की ओर से उक्त क्लेम में स्टेटमेंट आफ क्लेम के पैरा 3 की कतई नकारा गया है। इस संबंध में प्राप्ति श्रमिक महेन्द्र कुमार ने उसके शपथ पत्र में यह व्यक्त किया कि प्राप्ति की सेवा स्टेशन मास्टर पृथ्वीराजपुर ने दिनांक 14-9-81 को बाद दोपहर मौखिक रूप से समाप्त कर दी। यद्यपि प्राप्ति श्रमिक महेन्द्र कुमार ने उसके शपथ पत्र के पैरा 3 में पुनः यह कहा है 'एक कलैण्डर वर्ष में 240 दिन से अधिक कार्य करने के आधार पर लगातार काम करने वाला औद्योगिक कर्मचारों हो गया।' मगर उसके प्रतिरोक्षण से स्पष्ट है कि वह सर्वप्रथम 22-5-80 को ग्राम कानून पानीवाले के रूप में लगा था और उसने 30-9-80 तक कार्य किया। फिर उसने माना कि उसके पश्चात् उसने 23 व 24 अप्रैल, 81 को 2 दिन के लिए और कार्य किया और फिर अंतिम बार 21-5-81 से 14-9-81 तक उसने पानी वाले के रूप में कार्य किया एवं 14-9-81 के बाद उसे नहीं रखा। उपरोक्त तारीख 14-9-81 से एक कलैण्डर वर्ष पंछे की ओर जब गणना करते हैं तो 15-9-80 को एक बार पंछे की ओर फतने में प्राप्ति श्रमिक के द्वारा कुल 145 दिन कार्य करता है प्रमाणित होता है और यह धारा 25 बी. के अनुसार 240 दिन कार्य दिवस एक कलैण्डर वर्ष में नहीं बनते हैं। इससे यह स्पष्ट है कि प्राप्ति श्रमिक ने सेवा समाप्ति से पूर्व एक कलैण्डर वर्ष में 240 दिन कार्य नहीं किया और वह इस प्रकार की सेवा समाप्ति में धारा 25 एक. का लाभ उठाने का अधिकारी नहीं है। इस प्रकार प्रथम विचारणीय बिन्दु का उत्तर नकारात्मक पाया जाता है।

अब देखता यह है कि आया प्राप्ति श्रमिक धारा 25 जो. और औद्योगिक विवाद नियम 77 का किस हद तक लाभ प्राप्त कर सकता है। इस संबंध में योग्य अधिकृत अप्राप्ति रेलवे ने यह कह की कि जब 25 बी. अधिनियम के अनुसार प्राप्ति श्रमिक द्वारा एक कलैण्डर वर्ष में 240 दिन पूरे नहीं किए थे तो वह धारा 25 बी. अधिनियम लागू किये जाने का सूरत में सेवा समाप्ति से 240-दिन कार्य किया जाना अनिवार्य है। धारा 25 जो. अधिनियम एक स्वतंत्र धारा है जो धारा 25 एक. अधिनियम पर निर्भर नहीं करती है। या किसी प्रकार उससे जुड़ी हुई है। 1978 डब्ल्यू. एन. एम. (यू. सी.) 223 (डॉ. की.) राजस्थान राज्य बनौम निध कुमार में यह व्यवस्था रखी गई है कि यद्यपि धारा 25 एक. के प्रावधान पूरे नहीं होते हैं तो भी धारा 25 बी. अधिनियम लागू हो जाता है और यह भी विनिश्चित किया गया कि धारा 25 जो. के प्रावधान

प्राथमिक प्रावधान है। इसके प्रतिनिधित्व प्राचीं महेंद्र कुमार की सेवा जो 15-9-81 को समाप्त की गई, उनमें धारा 2 (ओ. आ.) (ए.) (बी.) (सी.) के प्रावधान प्रमाणित नहीं होने से इन प्रकार की सेवा समाप्त छूटनी की परिभाषा में आती है और छूटनी की परिभाषा में जो तीन प्रकार के अपवाद हैं, वे इस प्राचीं की सेवा समाप्ति में नहीं हैं। उपरोक्त माध्यम से यह प्रमाणित हो चुका है कि रेलवे की ओर से बनी छूटनी सूची घोषित नहीं की गई है, न ही कैबिनेट संस्कार को इस प्रकार की छूटनी को सुचना भेजी गई है। 1985 (2); सुप्रीम कोर्ट केस नं० 645 इन्डिया यावत बनाम युनिवर्सल फ्रॉक इटिया में माननीय उच्चतम न्यायाधीश ने यह विनिश्चित किया है कि भारतीय संविधान के अनुच्छेद 14 के प्रावधान के बाधनेशन को अबाधित करने के लिए उचित एवं वैधानिक स्वीकृति रेलवे के लिए यह होगा कि आकांक्षिक अधिकारी को रेलवे का मंडल बाईन एक लिस्ट तैयार की जाए और फिर उनमें से जिसको सबसे अधिक सेवा हो उनको पहले नियोजित किया जाए। इसी तर्ज पर इस मुमयित्व सिद्धान्त को मान्यता दी गई है कि पीछे आने वाले जो, और इसी सिद्धान्त पर धारा 25-डी, अधिनियम अध्यापित है। माननीय राजस्थान उच्च न्यायालय एवं माननीय उच्चतम न्यायालय द्वारा यह विनिश्चित किया जा चुका है कि धारा 25 जो, एवं औद्योगिक नियमों 1957 के नियम 77 के प्रावधान आकर्षक प्रावधान हैं और उनको पालना किये बिना जो छूटनी की जाती है वह अवैध होती है और कर्मचारियों को अवैध छूटनी के प्रत्यक्ष रूप पुनः सेवा में बेतन मजदूर बने हुए होने के अधिकारी होने हैं। यहाँ यह भी काबिल गौर है कि धारा 25 जो, अधिनियम के प्रावधान और धारा 25 एच, अधिनियम रेलवे बोर्ड के बतौर हृदय नियम-को इन धाराओं के प्रावधान के विपरीत हैं। इन पर औद्योगिक अधिनियम के प्रावधान और रॉडिंग प्रमाण रखते हैं। प्राचीं अधिकारी महेंद्र कुमार ने उनके प्रतिरोक्षण में यह स्पष्ट किया है कि जब 14-9-81 को उन सेवा से हटा दिया तो उनके बाद फिर कभी उन नौकर नहीं रखा गया उमने यह स्पष्ट है कि सन् 1981 के पश्चात प्राचीं अधिकारी को पुनः नौकरी पर नहीं बुलाया गया जबकि नम मोमम में पाली वाली को हर वर्ष बुलाया जाता रहा है। इससे धारा 25 एच, का भी उल्लंघन किया जाता प्रमाणित होता है। धारा 25 जो, अधिनियम व नियम व औद्योगिक विषय नियमों 1957 के नियम 77 में छूटनी के लिए कार्य दिखाने किये हैं। इसकी परितीमा नहीं रखी गई है। ए. आर्. एम. 1987 सुप्रीम कोर्ट पृष्ठ 801 जो, गविन्द राजू बनाम राज्य प्रदेश राज्य में यह विनिश्चित किया गया है कि धारा 25 जो अधिनियम और नियम 77 यह इनकी परिमाण किये जाने से पूर्व आवश्यक होती है।

अप्राचीं रेलवे की ओर से यह तर्क उठाया गया है कि इस प्रकरण में रेलवेस चिकीजन रेलवे मैनेजर उत्तर रेलवे बॉकानेर के विरुद्ध है परन्तु डी. आर. एम. बॉकानेर के विरुद्ध स्टेटमेंट आर्क क्लेम में यह आरोप नहीं है कि उन्होंने प्राचीं अधिकारी को हटाया हो। बॉकानेर की ओर से यह स्पष्ट प्रतीत है कि डी. आर. एम. बॉकानेर ने प्राचीं को नौकरी से हटाया और प्राचीं का भी यह कथन है कि रेलवे स्टेशन पुष्पीगञ्जपुर ने उसे नौकरी से हटाया। ऐसी परिस्थिति में योग्य अधिवक्ता रेलवे ने बहुत को कि वे न्यायालय रेलवेस से बाहर जाकर निर्णय नहीं कर सकेंगी। इस न्यायाधीकरण को निर्देशन को परिधि में ही मामले को तय करना है। इस संबंध में योग्य अधिवक्ता रेलवे ने यह भी बहुत को कि यह मामला निर्देशन के अन्तर्गत नहीं है और इस तर्क की समुचित में योग्य अधिवक्ता रेलवे ने आर. एन. आर. 1984 एड्स 931 एवं आर. एन. आर. टी. सी. बनाम न्यायाधीन श्रम न्यायालय पर आरोप किया।

यद्यपि रेलवेस में प्राचीं अधिकारी महेंद्र कुमार की सेवा समाप्ति डी. आर. एम. बॉकानेर के द्वारा किये जाने का उल्लेख है मगर क्लेम स्टेटमेंट में डी. आर. एम. उत्तर रेलवे बॉकानेर का पक्षकार बताया गया है। सुप्रीम कोर्ट जो, आर. एम. उत्तर रेलवे बॉकानेर को भी पार्टी बनाया गया। सीनर रेलवे माल्टर/स्वीनर/डुन को भी पार्टी बनाया गया। इस प्रकार स्टेटमेंट आर्क क्लेम में उन लोगों को भी पार्टी बनाया गया है। प्राचीं अधिकारी को नियोजित डी. आर. एम. उत्तर रेलवे बॉकानेर और डी. पी. आ. बॉकानेर

निश्चित और पर ये यह विनिश्चित है। यह भी एक स्वीकृत तथ्य है कि डी. आर. एम. के आदेश से ही डी. एन. ए. डी. पी. आ. एम. करती था। और डी. पी. आ. प्राचीं अधिकारी का पे मास्टर था। इस प्रकार जबकि डी. आर. एम. की स्वीकृति से डी. पी. आ. डी. एन. ए. स्वीकृति करता था तो इस सूरत में आर. एन. आर. 1984 पेन 981 लागू नहीं होती है। इसके प्रतिरुक्त मजदूरी वाली में डी. आर. एम. उत्तर रेलवे बॉकानेर को पार्टी बनाया गया था। स्टेटमेंट आर्क क्लेम में भी डी. आर. एम. उत्तर रेलवे बॉकानेर को पार्टी बनाया गया है। रेलवे के गवर्नर के, तत्कार ने यह स्पष्ट माना है कि डी. पी. आ. प्राचीं का पे मास्टर था और जिन डी. एन. ए. के नही प्राचीं अधिकारी को नौकरी तक तो वो उनकी स्वीकृति देने वाला डी. आर. एम. उत्तर रेलवे बॉकानेर ही था। एक्सीडेंट एम. 1 से विरुद्ध है कि इन ए. डी. आर. एम. खुद ने प्रपू किया था। ऐसी सूरत में यह एंटाज निराधार रहती है कि स्टेशन मास्टर के द्वारा प्राचीं अधिकारी को हटाये जाने का कारण डी. आर. एम. बॉकानेर के द्वारा उनका सेमाई समाप्त करना नहीं माना जायगी और न्यायाधिकरण को अधिकारिता प्राप्त नहीं है। जब डी. आर. एम. का सब एक्सीडेंट स्टेशन मास्टर प्राचीं की सेवा समाप्त कर देता है तो निश्चित तौर पर उसकी द्वारा सेवा समाप्त किया जाता अवैध है। डी. आर. एम. उत्तर रेलवे बॉकानेर की स्प. पार्टी बनाया जाता है। योग्य अधिवक्ता रेलवे की यह तर्क बेवजरी बन आता है कि डी. आर. एम. बॉकानेर में प्राचीं की सेवा समाप्त नहीं की। जब अधिवक्ता कर्मचारी किसी अधिकारी की सेवा अवैध रूप से समाप्त कर देता है जिस पर का उच्चधिकारी द्वारा स्वीकृत किया गया था, ऐसा सूरत में उन मजदूरी को पार्टी बनाने से अधिक को पूरा अवतार मिल सकता है और योग्य अधिवक्ता रेलवे की यह तर्क निराधार रहती है कि डी. आर. एम. ने सेवा समाप्त नहीं की इसलिए इन रेलवेस को नगरात्मक रूप से निषिद्ध किया जाए। सेवा समाप्ति से पूर्व प्राचीं महेंद्र कुमार ने निश्चित तौर पर 120 दिन से अधिक काम कर लिया था और जो नेने कर्मचारी 120 दिन कार्य कर लेता है वह स्वतः अस्थाई स्टेशन प्राप्त करने का अधिकारी हो जाता है और उसे अनुसूचितकालिक कार्यवाही में अर्पण व नियमों आदि का संरक्षण भी प्राप्त हो जाता है। यह दोष कि प्राचीं अधिकारी ने काम नहीं किया और दूठा दिखा दिया यह एक स्थिमा की परिभाषा में आता है और ऐसे स्थिमा के लिए आरोप पत्र दिया जाना आवश्यक था। मजदूरी प्रकरण में प्राचीं महेंद्र कुमार को सेवा से हटाने से पूर्व बरिष्ठता सूचना नहीं बनाई और औद्योगिक विषय 1957 के नियम 77 जो, धारा 25 जो के आश्रय प्रावधान का उल्लंघन किये जाने से प्राचीं महेंद्र कुमार की छूटनी अवैध पाई जाती है और यह सेवा समाप्ति को निषेध से सेवा में बहाल होने का अधिकारी पाया जाता है।

अब यह देखते हैं कि आया श्री महेंद्र कुमार सेवा समाप्ति से लगा कर सेवा में बहाल किये जाने तक पूरा बेतन प्रत्य करने का अधिकारी है या नहीं। श्री महेंद्र कुमार ने इस संबंध में उनके प्रतिरोक्षण में इसका जबर कहा है कि "1981 में हटाने के बाद से अने न्याय में मजदूरी करना है। मजदूरी के 11.60 पैसे प्रतिदिन काम करने के होते हैं। इस संबंध में योग्य अधिकृत प्रतिनिधि प्राचीं ने बहुत का है कि प्राचीं महेंद्र कुमार ने सेवा समाप्ति के पश्चात गांध में मजदूरी करता माना है और 11.60 पैसे मजदूरी के लेने हैं यह भी माना है मगर योग्य अधिकृत प्रतिनिधि प्राचीं ने बहुत को कि गांध में कृषि संबंध मजदूरी को 12 महीने मजदूरी नहीं मिलती है। क्या हुआ, कभी फ्रव बोलने या काठने के समय पर मजदूरी मिल जाती है। इस संबंध में योग्य अधिकृत प्रतिनिधि ने 1984 एन. आर्. बी. 1805 राजेन्द्र कुमार विरुद्ध बनाम तेहरी एडमिनिस्ट्रेशन पर आरोप करने हैं। प्राचीं अधिकारी को पीछे के पूरे बेतन दिलाए जाने की प्रार्थना की। इस संबंध में प्राचीं स्वयं से यह माना है कि वह उनके गांध में मजदूरी करता है जिसके 11.60 पैसे प्रतिदिन मिलते हैं। यह तर्क है कि गांध में 12 महीने मजदूरी नहीं मिलती है वेसी सूरत में प्राचीं अधिकारी भी नौकर बने को प्राप्ति करने का अधिकारी पाया जाता है।

प्रश्न: प्रार्थी श्रमिक के पक्ष में प्रबंधक इस प्रकार प्रार्थित किया जाता है कि श्री. प्रार. एस. उत्तर रेलवे बीकानेर के द्वारा प्रार्थी महेन्द्र कुमार आकिरमक श्रमिक को सेवा समाप्त करना एवं न्याय संगत नहीं था। प्रार्थी उसकी सेवा समाप्ति की तिथि दिनांक 15-9-81 से सेवा समाप्ति से पूर्ववत् पद व वेतन पर रहने होने का अधिकारी है। 15-9-81 के बहाल किये जाने की तिथि के बीच वेतन व मंजूरी भत्ता आदि कुल ऐरियर्स का यह तान चौलाई वेतन स्वयं प्राप्त करेगा। उसकी सेवाएं 15-9-81 से बहाल किये जाने तक निरंतर मानी जाएगी।

प्रभाप सिंह यादव, न्यायाधीश
[स. एल-41012/15/84-बी. II-बी (भाग)]

का. प्र. 492 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नार्दन रेलवे, बीकानेर के प्रबंधक के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार के 31-1-90 को प्राप्त हुआ था।

S.O. 492.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Bikaner and their workmen, which was received by the Central Government on 31-1-90.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।

माननीय न्यायाधीश श्री प्रभाप सिंह यादव, प्रार. एच. जे. एस.
केस नं. बी. आई. टी. 16/35
मध्य

उपाध्यक्ष, रेलवे केन्द्रल सेक्टर यूनियन, डागा स्कूल के पास, बीकानेर।

बनाम

डिबीजमल रेलवे मैनेजर, नार्दन रेलवे, बीकानेर।

रैफरेन्स अंतर्गत धारा 10 (1) (बी) एवं धारा 10 उपधारा 2 (ए)

औद्योगिक विवाद अधिनियम 1947

उपस्थिति

प्रार्थी श्रमिक की ओर से : श्री अरविन्द सिंह
अप्रार्थी की ओर से : श्री पी. पी. सिंह
दिनांक प्रकाशित : 19-7-89

प्रश्न

श्रम मन्त्रालय भारत सरकार के ईंका अधिकारी ने उनकी प्रार्थना में एल. 41012(24)/84-बी. II (बी) दिनांक 6-4-1985 से निम्न विवाद अंतर्गत धारा 10 (1) (बी) औद्योगिक विवाद अधिनियम, 1947 जिसे तत्पश्चात् अधिनियम मित्रा आयोगा वास्ते अधिनियमार्थ इस न्यायाधिकरण को प्रेषित किया है :

"Whether the action of the Regional Manager, Northern Railway, Bikaner in terminating the services of Shri Om Singh Bhati, a casual worker under IOW Bikaner w.e.f. 11th October, 1980 is justified? If not what relief Shri Bhati is entitled to?"

2. दिनांक 10-4-85 को यह निर्देशन इस न्यायालय में प्राप्त होने के बाद पंजीकृत किया गया एवं उभय पक्षकारान को नोटिस जारी किये गये। नोटिस जारी होने के पश्चात् प्रार्थी यूनियन के उपाध्यक्ष ने स्टेटमेंट आफ वसेस दिनांक 8-5-85 को निम्न प्रकार से प्रस्तुत किया कि श्री ओमसिंह भाटी पुत्र श्री स्वामी सिंह ने दिनांक 4-10-79 को कार्य निरीक्षक बीकानेर के कार्यक्षेत्र में बतौर खसलासी कार्य प्रारम्भ किया।

तत्पश्चात् वह लगातार खसलासी का कार्य करता रहा। प्रार्थी श्रमिक ओम सिंह भाटी ने एक कलेण्डर वर्ष में 240 दिन से अधिक निरंतर कार्य किया दिनांक 10-10-80 को मन्त्रालय पश्चात् प्रार्थी श्रमिक को निरीक्षक नार्दन रेलवे बीकानेर ने मौखिक आदेश से सेवा मुक्त किया। इस संबंध में यह भी प्रसीधन रखा कि प्रार्थी श्रमिक की सेवामें बतौर छंटनी के समाप्त की गई और छंटनी इस प्रकार संबंध होता दिखा कि प्रार्थी श्रमिक की छंटनी किये जाने से पूर्व उसे कोई नोटिस नहीं दिया गया और न ही उसे छंटनी का सूचना दिया गया। सेवा समाप्ति करते समय बाब वाला श्रमिक पहले जाय के सिद्धांत पर ध्यान नहीं दिया गया इस प्रकार प्रार्थी श्रमिक की सेवा अनुचित प्रकारण एवं अर्थ रूप से समाप्त की गई है। सेवा समाप्ति के पश्चात् कर्मचारी की ओर से यूनियन ने औद्योगिक विवाद उठाया जिसमें प्रमकल धाती के फनस्वरूप केन्द्रिय सरकार ने यह मौजूदा रैफरेन्स इस न्यायाधिकरण में प्रेषित किया है। प्रश्न: प्रार्थना की कि कर्मचारी को पुनः सेवा में नियोजित किया जावे और बीच की अवधि का पूरा वेतन वेतनमान २० 196-232 में दिलाया जावे।

3. अप्रार्थी रेलवे प्रशासन की ओर से स्टेटमेंट आफ क्लेम का उत्तर दिनांक 7-11-86 को अंमोजी में प्रस्तुत किया जिसे अनुवाद करने पर निम्न प्रकार सत्य है। यह स्वीकार किया कि प्रार्थी ओम सिंह भाटी ने दिनांक 4-10-79 से कार्य निरीक्षक बीकानेर के क्षेत्र में खसलासी के पद पर कार्य किया परन्तु कर्मचारी ने 4-10-79 से 10-10-80 तक लगातार कार्य किया इसकी चुनौती देने हुए यह उत्तर क्लेम में अंकित किया गया कि प्रार्थी ने 4-10-79 से 10-10-80 तक लगातार कार्य नहीं किया। ओम सिंह भाटी एक आकस्मिक श्रमिक था जिसमें बीच-बीच में अवधि छोड़कर के कुछ समय के लिए काम किया और इन समयों के बारे में कार्य विवरण का ब्योरा इस प्रकार दिया कि प्रार्थी ने 4-10-79 से 1-1-80 तक 90 दिन, 3-1-80 से 3-3-80 तक 62 दिन, 1-4-80 से 7-6-80 तक 80 दिन, 16-6-80 से 20-7-80 तक 45 दिन, 2-8-80 से 31-8-80 तक 30 दिन, 1-9-80 से 10-10-80 तक 40 दिन कार्य किया। अंतिम कार्य दिवसों के लिए टी. एल. ए. सं. 6 60 दिन के लिए स्वीकृत था परन्तु प्रार्थी श्रमिक ने केवल 40 दिन ही यानि 1-9-80 से 10-10-80 तक कार्य किया और वह संबंध कार्य को छोड़ गया। 11-10-80 को स्वेच्छा से वह काम पर नहीं आया अप्रार्थी प्रशासन ने कभी भी उसे काम से नहीं हटाया। इस सत्य को भी नकारा कि कार्य निरीक्षक बीकानेर ने अपने गुप्तानी आदेश में प्रार्थी श्रमिक को सेवामें समाप्त की है कि प्रार्थी ने संबंध सेवा छोड़ी थी इसलिए सरकार को इसकी सूचना नहीं देने का प्रश्न ही नहीं उठता था। औद्योगिक विवाद उत्पन्न होने को भी नकारा। इस बात को भी नकारा कि प्रार्थी श्रमिक रेलवे केन्द्रल सेक्टर यूनियन का सदस्य था। प्रार्थी कोई प्रतुतीय पाने का अधिकारी नहीं है।

4. प्रार्थी ने स्टेटमेंट आफ क्लेम की समुष्टि में अपने संबंध का पक्ष पक्ष प्रस्तुत किया जिसे इस न्यायाधिकरण द्वारा स्थापित किया गया। योग्य अधिवक्ता रेलवे ने प्रार्थी श्रमिक से जिरह का। रेलवे की ओर से श्री सावरवाल पुत्र श्री गोरी चन्द कार्य निरीक्षक पेड-III ने अपना पक्ष प्रस्तुत किया जिसको इस न्यायाधिकरण द्वारा स्थापित किया गया। योग्य अधिवक्ता प्रतिनिधि प्रार्थी यूनियन ने श्री सावरवाल से प्रतिपरीक्षण किया। मैने बहुस योग्य अधिवक्ता प्रतिनिधि प्रार्थी यूनियन एवं योग्य अधिवक्ता अप्रार्थी रेलवे प्रबंधक के द्वारा मृती है। पक्षधारी का सेवान पूर्वक अवलोकन किया है।

5. इस न्यायाधिकरण के समक्ष निम्न विचारणीय प्रश्न कायम किये जाते हैं :

1. यह कि प्रार्थी श्रमिक ओम सिंह भाटी ने एक कलेण्डर वर्ष में 240 दिन से अधिक निरंतर कार्य किया और क्या वह इस प्रकार कार्य करने वाले औद्योगिक कर्मकार हो गया।

2. प्राची श्रमिक ओम सिंह भाटी की सेवा समाप्ति धारा 25 (एफ) व जी अधिनियम के उल्लंघन में की गई और क्या उसकी सेवा समाप्ति प्रबंध छंटनी की परिभाषा में आती है।

3. अनुतोष

प्रथम विचार बिंदु

6. प्रथम विचार बिंदु प्राची ओम सिंह भाटी के एक क्लेण्डर वर्ष में 240 दिन निरंतर कार्य करने के संबंध में है। इन संबंध में प्राची यूनियन ने श्री ओम सिंह भाटी का 4-10-79 से 10-10-80 तक खल्लासी के पद पर लगातार कार्य करना व्यक्त किया है। अप्राची यूनियन की ओर से स्टेटमेंट आफ फेस के प्रथम चरण की स्वीकार किया है आया कि यह माना है प्राची ओम सिंह भाटी का 4-10-79 को खल्लासी के पद पर रेलवे में नियोजित किया था जहां तक प्राची की सेवा समाप्ति के संबंध में तारीख का प्रश्न है तारीख तो 10-10-80 ही दोनों पक्षकारों की साक्ष्य से जाहिर होती है परन्तु स्थिति के संबंध में रेलवे की ओर से यह कहा गया है कि चिनांक 10-10-80 को प्राची श्रमिक को हटाया नहीं गया अपितु वह स्वयं कार्य छोड़कर चला गया और 11-10-80 को वह काम पर नहीं आया। परन्तु अप्राची रेलवे के द्वारा पेश किये गये जवाब से ही यह बख्शी प्रमाणित है कि जवाब की सर में 2 में यह बख्शी प्रमाणित है कि प्राची श्रमिक ओम सिंह भाटी ने 4-10-79 और 10-10-80 के मध्य 335 दिन कार्य किया। अप्राची के जवाब से ही यह बख्शी प्रमाणित है कि प्राची श्रमिक ने एक क्लेण्डर वर्ष में 240 दिनों में अधिकांश निरंतर कार्य किया और वह इस प्रकार 240 दिन से अधिक निरंतर कार्य करने वाला औद्योगिक कर्मकार हो गया।

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7. दूसरा विचार बिंदु इस बारे में यह है कि प्राची प्राची की सेवा समाप्ति प्रबंध छंटनी का परिभाषा में आती है अथवा नहीं? इस संबंध में प्राची श्रमिक ने उसके शपथपत्र में यह व्यक्त किया है कि प्राची को सेवा अनुचित, अवैध एवं अनाधिकृत रूप से समाप्त का गई। इसको मुझे मुकामिल रेलवे का और मे यह डिफेंस लिया गया है कि प्राची स्वयं 10-10-80 के पश्चात् काम पर नहीं आया और कार्य निरंतर बिकानेर में जूबातो प्रवेश से उसकी सेवा समाप्त नहीं की। इस बारे में प्रथम यह देखना है कि प्राची किस पक्ष की साक्ष्य इस तथ्य के बारे में विश्वसनीय है। इस संबंध में प्राची ओम सिंह भाटी का शपथपत्र काबिल गौर है। जिसने कि अपने शपथ पत्र में यह लिखाया है कि उसकी सेवा चिनांक 11-10-80 से अनुचित एवं अवैध रूप से छंटनी के तौर पर समाप्त कर दी। उसने अपनी जिह्वा में भी यह लिखाया है कि उसने 4-10-79 से 10-10-80 तक लगातार कार्य किया। आगे जिह्वा में यह भी कहा कि उसने 60 दिन के दौरान केवल 40 दिन कार्य किया ही और वह स्वयं नौकरी छोड़कर चला गया हो। आगे यह भी लिखाया कि उसे आई. ओ. डब्ल्यू. थी. अटनागर ने काम पर आने के लिए मना किया था। इस संबंध में यह भी व्यक्त किया कि 10-10-80 को काम करने के बाद उसकी यह कहा था कि "अब काम पर मत आना"। इस प्रकार प्राची श्रमिक ने अपने शपथपत्र के मुख्य परीक्षण एवं प्रतिपरीक्षा दोनों जगह कम्प्लेंट्सो यह कहा है कि उसे 10-10-80 के बाद काम पर न आने के लिए आई. ओ. डब्ल्यू. अटनागर साहब ने कहा था इसके मद्दे मुकामिल थी साबरमाल का शपथपत्र है। यद्यपि साबरमाल ने अपने शपथपत्र में यह कहा है कि प्राची खुद ही उसकी स्वेच्छता से रेलवे की केंजुबल सेबर की सेवा में गैर हाजिर रहा। उसको चिनांक 10-10-80 के बाद सेवा से प्रलग करने की कोई कार्यवाही नहीं की न उसकी चिनांक 11-10-80 से निकाला। श्री साबरमाल वह व्यक्ति नहीं है जिसके कि द्वारा 10-10-80 की सेवा समाप्त करने का आरोप है वह तो श्री अटनागर था जिसके कि द्वारा प्राची श्रमिक को हटाने की वास्तव लाक्षण है। इस समूह तथ्य का ज्ञान श्री अटनागर को ही हो सकता था और श्री अटनागर ही इस तथ्य के बारे में ग्यात देने में एक सक्षम गवाह था जिसे रेलवे की ओर से पेश नहीं किया गया है। इस संबंध में प्राची श्रमिक की साक्ष्य सक्षम एवं विश्वसनीय है

और जबकि साक्ष्य से यह प्रमाणित होता है कि उसने स्वयं से 10-10-80 को कार्य छोड़ा बल्कि उसे आई. ओ. डब्ल्यू. थी. अटनागर ने काम पर न आने के लिए कहा और इस प्रकार उसकी सेवा समाप्त की। प्राची की साक्ष्य से यह बख्शी प्रमाणित है कि उसकी सेवा समाप्त किये जाने से पूर्व उसे कोई नोटिस नहीं दिया गया न ही छंटनी का सुझाव दिया गया न ही नोटिस अवधि का कोई वेतन नहीं दिया गया। ऐसी सूरज में प्राची श्रमिक की सेवा समाप्ति धारा 25 एफ औद्योगिक विवाद अधिनियम के उल्लंघन में की जाना पाई जाती है और यह अवैध छंटनी थी। प्राची की साक्ष्य से यह भी प्रमाणित है कि उसकी सेवा समाप्ति एक मन्त्रालय के अन्तर कोई विनियमन सूचना घोषित नहीं की गई और न ही पहले प्राची पाठे जाये के मिडिल का पासत किया गया और न ही केन्द्रीय सरकार को इस छंटनी का सूचना दे गई। ऐसी सूरज में प्राची की सेवा समाप्ति धारा 25 (जी) एवं औद्योगिक विवाद नियम 77 की उल्लंघन में किया जाना पाई जाता है इसलिए प्राची ओम सिंह भाटी की सेवा समाप्ति अवैध छंटनी प्रमाणित होती है।

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8. अनुतोष : चूंकि प्राची ओम सिंह भाटी की सेवा समाप्ति अवैध छंटनी की परिभाषा में आती है इसलिए सेवा समाप्ति से पूर्व पद व वेतन पर बहाल होने का अधिकारी पाया जाता है।

प्रार्थना

यह कि उत्तर रेलवे यंत्रालय के प्रबंधक यानि मंडल कार्मिक अधिकारी, सहायक अभियंता व कार्य निरीक्षक यंत्रालय का यह आदेश कि ओम सिंह भाटी अतिरिक्त श्रमिक की सेवा 11-10-80 से समाप्त की गई है वह अनुचित एवं अवैध थी। अतः श्रमिक ओम सिंह भाटी सेवा समाप्ति की दिनांक से पूर्व पद व वेतन पर बहाल होने का अधिकारी पाया जाता है और दिनांक 11-10-80 से सेवा में बहाल किये जाने की तिथि तक उसकी सेवाये निरंतर माना जायेगी। यदि इस दौरान में अन्य कोई लाभ अर्जित हुआ हो तो वह भी वह श्रमिक पाने का अधिकारी होगा। उक्त आदेश का वह पंचाट पारित किया जाता है जिसे वास्ते प्रकाशनाय केन्द्रिय सरकार को अंतर्गत धारा 17 (1) अधिनियम भेजा जावे।

प्रताप सिंह यादव, न्यायाधीश

[सं. एन - 41012/24/84/डी II - की (भाग)]

का.आ. 493-—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीफोन एक्सचेंज बिकानेर, के प्रबंधक के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-90 को प्राप्त हुआ था।

S.O. 493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telephone Exchange, Bikaner and their workmen, which was received by the Central Government on 31-1-90.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।

उपस्थित :—माननीय न्यायाधीश श्री प्रताप सिंह यादव।

(आर.ए.जे.एम.)

सी.आई.टी. 4/85

मध्य

रेलवे केंजुबल सेबर यूनियन जरिये भारतसिंह मैंगर, महामंत्री, डागा स्कूल के पास बिकानेर।

प्रस्ताव

1. टिक्वीजनल, इजीनियर फोन, टेलीफोन एक्सचेंज निकट मदन शाना बीकानेर।

2. मदन टिक्वीजनल आफिसर फोन टेलीफोन एक्सचेंज निकट मदन शाना बीकानेर।

रिफरेंस :—अन्तर्गत धारा 10 (1) (बी) एडम् उप-धारा (2) (ए) औद्योगिक विवाद अधिनियम, 1947,

उपस्थिति :—1. श्री भरत सिंह सेंगर प्राचीं श्रमिक की ओर से उपस्थित।

2. श्री आर. डी. गोपी श्रीप्राचीं की ओर से उपस्थित।

3. दिनांक अगस्त : 1-9-89

अवार्ड

भारत सरकार के डेस्क अधिकारी ने उनके आदेश संख्या न. एल-40012 (21)/84/डी.-II-डी दिनांक 2-1-85 निम्न विवाद अन्तर्गत धारा 10 (1) (डी), औद्योगिक विवाद अधिनियम, 1947, जिसे तत्पश्चात् अधिनियम लिखा जाएगा, वास्ते अधिनियमार्थ प्रस्तुत किया :—

“Whether the Divisional Engineer, Telephone, P&T, Bikaner is justified in terminating the services of Shri Shiv Nath Sharma casual labour w.e.f. 22nd March, 1983. If not, to what relief is Shri Shiv Nath entitled?”

बाध प्राप्ति निर्देशन इसे इस न्यायाधिकरण में पंजीकृत किया गया। श्रीर उभय पक्षकारान को जरिये पंजीकृत डाक नोटिस जारी किये गये। प्राचीं यूनियन की ओर से श्री भरत सिंह सेंगर महामंत्री प्राचीं यूनियन से स्टेटमेंट ऑफ क्लेम निम्न प्रकार से पेश किया :—

यह कि श्री शिवनाथ शर्मा पुत्र श्री कामला प्रसाद निवासी बीकानेर को दिनांक 1-1-82 को दैनिक वेतन पर 6.25 पैसे की दर से सतुर्थ श्रेणी कर्मचारी के पद पर मदन टिक्वीजनल आफिसर फोन की देखरेख के लिए नियुक्त किया गया था। जिसे मई सन 1982 से वेतन 9/- प्रतिदिन की दर से दिया गया। आगे व्यक्त किया कि श्री शिवनाथ शर्मा ने एक कलैण्डर वर्ष में 240 दिन से अधिक काम कर वह लगातार काम करने वाला औद्योगिक कर्मकार हो गया था। आगे जाहिर किया कि प्राचीं की सेवा 21-3-83 से टर्मिनेट कर दी गई।

आगे प्राचीं लगाया कि प्राचीं की सेवा समाप्त करने समय कोई सेवा समाप्ती नोटिस अथवा नोटिस वेतन नहीं दिया। प्राचीं श्रमिक की सेवा मौखिक रूप से समाप्त की गई। यह भी व्यक्त किया कि प्राचीं श्रमिक को छंटनी का मुआवजा नहीं दिया गया। प्राचीं जैसे श्रमिक कर्मचारियों की वरिष्ठता सूची जोधित नहीं की गई, ना ही पहले आगे पीछी जाये के निदान का फायदा किया गया। अन्त में प्राचीं की कि दिनांक 21-3-83 से पूर्वत बहाल होने श्रीर टर्मिनेशन की पूरी क्षति का वेतन भत्ता दिया जावे, श्रीर जो भी अन्य लाभ वेत हो उसे दिलाया जावे।

अप्राचीं टिक्वीजनल इजीनियर फोन ने स्टेटमेंट ऑफ क्लेम का उत्तर निम्न प्रकार से प्रस्तुत किया।

बह कि प्राचीं यूनियन की शिवनाथ शर्मा कौण्डल लेबर के मामले में क्लेम प्रस्तुत करने का कोई अधिकार प्राप्त नहीं है। इसलिए प्राचीं यूनियन का क्लेम कायम रखे जाने योग्य नहीं है। आगे यह एतराज भी लिया टेलीफोन विभाग उद्योग की परिभाषा में नहीं आता है। आगे यह व्यक्त किया कि टेलीफोन विभाग के कर्मचारियों के लिए उनके सम्बन्ध में विभाग द्वारा सेवा नियम बनाने गये हैं तथा उनकी समस्त सेवा सम्बन्धी गान् एडम् मामले उपरान्त सेवा नियम से गौस होते हैं। आगे यह भी एतराज लिया कि कर्मचारी को सेवा से निकाला नहीं गया बल्कि वह स्वम् अपनी इच्छा से गौर नोटिस बिये काम छोड़ कर चला गया जिससे विभाग को काफी मुकसाब हुआ।

अने प्राचीं की कि प्राचीं श्रीर प्रस्तुत किया गया स्टेटमेंट प्राचीं क्लेम खारिज किया जावे।

प्राचीं श्रमिक ने अपने स्टेटमेंट ऑफ क्लेम की सम्पुटी में शपथ पत्र प्रस्तुत किया, जिसे न्यायाधिकरण द्वारा मर्यापित किया गया। अप्राचीं नियोजक के अधिकृत प्रतिनिधि ने प्रतिपरीक्षण किया।

अप्राचीं नियोजक की ओर से श्री गोपी किशन पुत्र श्री हीरानाथ छंगानी ने अपना शपथ-पत्र उत्तर क्लेम की सम्पुटी में प्रस्तुत किया, जिसे न्यायाधिकरण द्वारा मर्यापित किया गया। प्राचीं श्रमिक व उनके अधिकृत प्रतिनिधि ने गवाह से प्रतिपरीक्षण किया। अप्राचीं नियोजक की ओर से श्री भगवान सिंह मन्डोवा व रामसंजीव मिश्रा साथ में प्रस्तुत हुआ। अप्राचीं नियोजक की साथ में प्रस्तुत हुए। इनके शपथ-पत्र न्यायाधिकरण द्वारा मर्यापित किये गये। योग्य अधिकृत प्रतिनिधि को प्राचीं ने हत गवाह से प्रतिपरीक्षण किया।

मैंने बहुत समय पक्षकारान सुनी है। पक्षकारों का ध्यानपूर्वक अनुलोचन किया है। न्यायाधिकरण के समक्ष निम्न विचारणीय प्रश्न है :—

(1) प्राचा प्राचीं श्रमिक सेवा समाप्ती से पूर्व एक कलैण्डर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाला औद्योगिक कर्मकार हो गया था।

(2) क्या प्राचीं की सेवा समाप्ती अवैध छंटनी की परिभाषा में आती है।

(3) प्रत्येक जायेंका भाव्य किये गये विचारणीय बिन्दु का निर्णय पक्षकारों व प्राचीं हुई साथ की रोजनी में निर्णित किया जावेगा।

प्रथम विचारणीय बिन्दु प्राचीं श्रमिक का एक कलैण्डर वर्ष में 140 दिन निरन्तर कार्य कर औद्योगिक कर्मकार होने के सम्बन्ध में है। प्राचीं श्रमिक शिवनाथ शर्मा ने उनके शपथ-पत्र में यह व्यक्त किया कि वह दिनांक 1-1-82 को दैनिक वेतन पर 6.25 पैसे पर सतुर्थ श्रेणी कर्मचारी नियुक्त है। मई 1982 से उसे 9/- रुपये प्रतिदिन की दर से दिया गया।

आगे व्यक्त किया कि उसकी सेवा दिनांक 21-3-83 से समाप्त की गई। उसने यह भी व्यक्त किया कि वह एक कलैण्डर वर्ष में 240 दिन से अधिक काम करने के आकार पर लगातार काम करते वाला औद्योगिक कर्मकार हो गया था। इस सम्बन्ध में प्रमाण-पत्र प्रवर्ण डब्ल्यू-1 व डब्ल्यू-2 होता व्यक्त किया। श्री रामसंजीव मिश्रा ने अपने शपथ-पत्र में यह स्वीकार किया कि दिनांक 1-1-82 को काम पर रखा था। इसे भी सही माना कि शिवनाथ शर्मा ने 21-3-83 तक लगातार काम किया। श्री रामसंजीव मिश्रा ने प्राचीं श्रमिक को कार्य पर रखा। आगे जिरह में यह भी स्वीकार किया कि श्री शिवनाथ शर्मा ने 21-3-83 तक लगातार कार्य किया। यदि दिनांक 21-3-83 से पूर्व एक कलैण्डर वर्ष में कार्य अन्तिम को कलाये तो वह प्रमाणित हो जाता है। एकजोविट डब्ल्यू-1 व डब्ल्यू-2 से यह वास्तव्य प्रमाणित हो जाता है कि सेवा समाप्ती आदेश दिनांक 21-3-83 से पूर्व एक कलैण्डर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाला औद्योगिक कर्मकार हो गया था। इस प्रकार प्रथम विचारणीय बिन्दु प्राचीं श्रमिक के हित में निर्णीत किया जाता है।

दूसरा विचारणीय बिन्दु प्राचीं की सेवा समाप्ती अवैध छंटनी के बारे में है इस सम्बन्ध में श्री शिवनाथ शर्मा ने उसके शपथ-पत्र में यह व्यक्त किया कि सेवा टर्मिनेट करने समय शपथ-कर्ता को कोई टर्मिनेशन नोटिस अथवा वेतन नहीं दिया गया। आगे यह व्यक्त किया कि उनकी सेवा अन्तुवित एडम् अवैध रूप में समाप्त की गई।

आगे व्यक्त किया कि उसकी सेवा समाप्ती मौखिक रूप से टर्मिनेट की गई न प्राचीं को रिटर्नमेंट कम्प्लेसशन दिया गया, न ही वरिष्ठता सूची जोधित की गई। जब प्राचीं को सेवा समाप्ती का नोटिस नहीं दिया गया, इस प्रकार जो सेवा प्राचीं की समाप्त की वह नोटिस अवैध

का पेमेंट न देने का छंटनी का मुद्दावजा देने के कारण श्री प्रार्थी जैसे श्रमिकों की परिष्ठाता सूची न करने से प्रार्थी की सेवा समाप्ती धारा 25 (एफ) अधिनियम के उल्लंघन में किया जाना पाया जाता है। अतः प्रार्थी की सेवा समाप्ती अवधि छंटनी के रूप में पाई जाती है। अप्रार्थी की ओर से जो यह विली खी गई है कि प्रार्थी श्रमिक स्वयं छोड़ कर चला गया यह स्वीकारणीय तथ्य नहीं है। प्रार्थी सेवा समाप्ती के समय से ही उसको हटाने के विरुद्ध ऐजिटेड करता रहा है और उसी के फलस्वरूप उसकी सेवा समाप्ती का निर्देशन इस म्यादाधिकरण को संगत मार्ग से पेश हुआ है। प्रार्थी स्वयं ने उसकी जिरह में यह व्यक्त किया है कि 21 मार्च 1983 तक उसे सेवा में रखा इस सम्बन्ध में यह भी व्यक्त किया कि 21-3-83 को वह इप्टी पर गया तो उसे हटा दिया। हटाने का उसे लिखित में नहीं दिया।

आगे व्यक्त किया कि श्री रामसंजीवन मिश्रा ने हटाया था। प्रवेश एम-1 से यह स्पष्ट है कि प्रार्थी श्रमिक शिवनाथ की 20 तारीख मार्च 1983 तक पी मार्क की उपस्थिति लगी हुई है। 31 मार्च 1983 को उसका भोफ डे लिखा हुआ है उसके नाम के सामने 22-3-83 को लाईन खींची हुई है। जिससे यह स्पष्टतया जाहिर है कि प्रार्थी श्रमिक के नाम के सामने 22-3-83 को सीधी लाईन खींच दी गई जिससे यह अनुमान निकाला जा सकता है कि उसे 22-3-83 को ही सेवा से हटा दिया गया है।

ए.आई.आर. 1986 उच्च न्यायालय पृष्ठ 132 में यह विनिश्चित किया गया है कि श्रमिकों की हाजिरी से नाम काट देना छंटनी की परिभाषा में आती है और इस बजोर में यह भी विनिश्चित किया गया है जहां धारा 25 (एफ) अधिनियम की परिपालना नहीं की गई हो वह छंटनी अवधि पायी जाती है और विवाद धारा 2(ए) की परिधि में आता है। इस प्रकार उक्त विनिश्चयन पर भरोसा करते हुए यह बाखूबी प्रमाणित हो जाता है कि गीजूदा विवाद में प्रार्थी श्रमिक का नाम मस्टर रोल से 22-3-83 को उसके नाम के आगे लाईन फेर कर काट दिया गया। इस प्रकार लाईन फेर कर नाम काटना सेवा समाप्ती पाई जाती है। यह सेवा समाप्ती धारा 2(09) अधिनियम के अर्थ में ऐसी सेवा समाप्ती छंटनी की परिभाषा में आती है और यह छंटनी धारा (25 एफ) अधिनियम के तहत की गई है वह अवधि पाई जाती है।

अप्रार्थी के गवाह श्री गोपी किशन ने यह व्यक्त किया है कि अक्टूबर 1982 में वह दूर संचार विभाग में कार्यरत था। प्रार्थी शिवनाथ शर्मा, ने उनके साथ मजदूरी का कार्य करता था ने दिनांक 22 मार्च, 1983 से कार्य छोड़ कर चला गया तथा कार्य छोड़ने से दो तीन दिन पहले उसने उसको बताया कि उसके पिताजी रेलवे में नौकरी करते हैं तथा उन्होंने उसको दूसरी जगह अच्छी नौकरी पर लगा दिया था। जब उससे जिरह की गई तो उसने व्यक्त किया "शिवनाथ शर्मा ने 22 मार्च सन् 83 को यह कहा था कि पिता की रेलवे सर्विस से रिटायर हो रहे हैं वहां मेरे को सर्विस मिल रही है।" गवाह के मुख्य परीक्षण और प्रति-परीक्षण में भिन्नता प्रतीत होती है इस गवाह ने अपने शपथपत्र के पैरा संख्या 5 में प्रार्थी श्रमिक द्वारा 22 मार्च 83 से 2-3 दिन पहले पद बताना जाहिर किया है कि उसके पिताजी रेलवे में नौकरी करते हैं तथा उन्होंने उसको दूसरी जगह अच्छी नौकरी पर लगा दिया तथा एक दो दिन में कार्य छोड़ कर चला जायेगा। गवाह ने उसके प्रतिपरीक्षण में पिता के रिटायर होने के कारण नौकरी छोड़ना कहा है और यह लिखाया है शिवनाथ ने 22 मार्च 1983 को उसे यह कहा था कि पिता की रेलवे सर्विस से रिटायर हो रहे हैं वहां मेरे को सर्विस मिल रही है इस प्रकार गवाह के मुख्य परीक्षण में पिछे गये तथ्यों ने जिरह में आये तथ्य मेल नहीं खाते हैं फिर शिवनाथ शर्मा ने गवाह का यह बात 22 तारीख से 2-3 दिन पहले कही या 22 को कही विनिश्चित नहीं होती है। पिता के रिटायर होने के कारण प्रार्थी श्रमिक को सेवा मिल रही थी। यह 22-1-80 के जवाब में तहरीर नहीं किया है इससे स्पष्ट है कि गवाह ने उसके जो हल्कनामे में यह तथ्य लिखे कि प्रार्थी श्रमिक के पिता के रिटायर होने के कारण उसे वहां रेलवे में सर्विस मिल रही थी इसलिए वह छोड़ कर चला गया था। यह बाद के विचार

की अभिव्यक्ति प्रतीत होती है और विपक्षनीय नहीं है कि गोपीकिशन ने आगे अपनी जिरह में यह बताया कि वह नहीं बता सकता कि आया व शिवनाथ शर्मा की रेलवे में नौकरी लगी या नहीं और यह भी बताया कि 22-3-83 को शिवनाथ शर्मा ने रेलवे में लगने की बात कहा पर कही यह बात नहीं। और यह भी कह दिया शिवनाथ शर्मा ने रेलवे में नौकरी लगने की बात 22-3-83 को ही बताया थी पहले नहीं बताया इससे स्पष्ट है कि गवाह ने उक्त शपथपत्र के पैरा संख्या 5 में 22-3-83 से दो तीन दिन पहले उसने उसको बताया लिखाया है। वह तथ्य गलत तहरीर करना प्रमाणित हो जाता है। श्री गोपीकिशन स्वभावी प्रतीत नहीं होता है। शपथपत्र मिश्रा ने भी अपने शपथपत्र में यह बात कही है कि प्रार्थी श्रमिक 22-3-83 को स्वयं अपनी मर्जी से बिना विभाग को सूचित किए बिना, लिखित प्रार्थनापत्र दिये छोड़ कर चला गया। इस गवाह ने उसके प्रतिपरीक्षण में यह माना है कि 22 तारीख से शिवनाथ शर्मा के अन्तर्गत में लाईन उसने फेरी है यह लाईन उसने एक ही दिन फेरी है जब यह कहा गया था कि अब आऊंगा नहीं। गवाह की स्वीकारोक्ति से यह प्रमाणित हो जाता है कि रामसंजीवन मिश्रा ने प्रार्थी के नाम के सामने 22-3-83 को एक लाईन फेर दी इससे स्पष्ट है कि श्री मिश्रा ने श्रमिक का नाम 22-3-83 को काट दिया। उसके द्वारा यह कहना कि प्रार्थी श्रमिक स्वेच्छा से नौकरी छोड़ कर चला गया सही प्रतीत नहीं होता है। यदि प्रार्थी श्रमिक स्वयं नौकरी छोड़कर जाता तो उस कदर वह अपनी पूर्व की नौकरी प्राप्त करने के लिए प्रयत्न नहीं करता यदि प्रार्थी श्रमिक स्वयं नौकरी छोड़ जाता तो श्री मिश्रा के द्वारा यह लाइन या वह उसको नोटिस देते या चार्जगीट देते न हों प्रार्थी श्रमिक जैसे कर्मचारियों की परिष्ठाता सूची बनाई। इस प्रकार उपरोक्त कारणों से प्रार्थी श्रमिक शिवनाथ शर्मा को 22-3-83 का सेवा मुक्ती अवधि छंटनी की तारीख में पायी जाती है यह विवादित बिन्दु श्री प्रार्थी श्रमिक के पक्ष में निर्णीत किया जाता है।

अनुवीध सूची प्रार्थी श्रमिक की सेवा समाप्ती से पूर्व वह एक कलेक्टर यंत्र में 240 दिन से अधिक निरन्तर कार्य करने वाला आर्थो-निक कर्मकार हो गया था। टेक्नीकल विभाग के निश्चित तौर पर उद्योग माना जा चुका है। किनांक 22-3-83 को प्रार्थी श्रमिक की छंटनी की जाना मांगित हो चुका है। प्रार्थी श्रमिक को छंटनी से पूर्व कोई नोटिस नहीं दिया गया न ही उसे छंटनी का मुद्दावजा दिया गया न ही कोई परिष्ठाता सूची बनाई गई न ही केंद्रीय सरकार को इस प्रकार की छंटनी की सूचना दी गई इस कारण से यह प्रमाणित हो चुका है कि प्रार्थी श्रमिक की छंटनी अवधि थी। अवधि छंटनी से प्रार्थी की सेवा समाप्ती नहीं होती है और उसका सेवा में बरअतूर रहना तत्पश्चात् किया जायेगा।

अतः प्रार्थी श्रमिक पुनः सेवा में बहाल होने के अधिकारी पाया जाता है। और यह सेवा समाप्ती से पूर्व पद व वेतन पर बहाल होकर वेतन प्राप्त करने का अधिकार पाया जाता है। आगे प्रार्थी श्रमिक के पक्ष में अब कोई निरा प्रमाण से पति किया जाता है।

यह कि मंडल अधिनियम टेक्नीकल पो.एन.टी. योमानेर श्री शिवनाथ शर्मा आकस्मिक श्रमिक को 22-3-83 से सेवा समाप्त करने में न्याय संगत एवं उचित नहीं था। श्री शिवनाथ शर्मा, पुनः सेवा में पूर्ण वेतन पर बहाल होने का अधिकारी हो व सेवा समाप्ती के दिनांक 22-3-83 से उनके निधि के पद पर उनी वेतन सहित बहाल किया जावेगा। 22-3-83 से सेवा में बहाल किये जाने की अधि का वेतन शर्मा सहित वेतन के रूप में प्राप्त करेगा। उसकी सेवा में बहाल किये जाने की तिथि तक निरन्तरता मानी जायेगी। इस अधि के दिनांक बाद अन्य कोई लाभ भी अर्जित हुए हैं वे भी वह पाने का अधिकारी होंगा।

पंक्ट की प्रतिपत्ता केंद्रीय सरकार को वान्ते प्रकाशनार्थ अन्वय 17 (1) अधिनियम से की जवे।

प्रमाणित सह दाख, न्यायाधीश

[सं. एन-40012/21/84-डी-2 (श्री) (साग)]

का.अ. 494.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में केन्द्रीय सरकार उत्तर रेलवे बीकानेर के प्रमुखों के सम्बन्ध विवादों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, जयपुर के पंचपट को प्रमाणित करती है, जो केन्द्रीय सरकार के 31-1-90 को प्राप्त हुआ था।

S.O. 494.—I pursuant of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Bikaner and their workmen, which was received by the Central Government on 31-1-90.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.जे.एस.
केस नं. सी.आई.टी.-3/86

मध्य

उपाध्यक्ष, रेलवे केन्द्रिय लेबर यूनियन, डागा स्कूल के पास,
बीकानेर

एवं

महाप्रबंधक, उत्तर रेलवे, बड़ौदा हाऊस, नई दिल्ली।

रैफरेंस क्रमांक धारा 10 (1) (घ) संपठित उपाधारा 2 (ए) औद्योगिक विवाद अधिनियम, 1947।

उपस्थिति

प्राथी यूनियन की ओर से : श्री अरविन्द सिंह
अप्राथी नियोजक की ओर से : श्री बी.ए.स. माथुर
दिनांक : 20-7-89

प्रस्ताव

श्रम मंत्रालय भारत सरकार के डेस्क अधिकारी ने उनकी अधिसूचन सं. एल. 41012/4/85 डी-2 (बी) दिनांक 22-1-86 निम्न विवाद संशोधित धारा 10(1) (घ) एवं उपाधारा 2 धारा 10 औद्योगिक विवाद अधिनियम, 1947, जिसे न्यायाधिकरण अधिनियम लिखा जायेगा वास्ते अधिनियमार्थ इस न्यायाधिकरण को प्रेषित किया है:

“क्या जोधपुर में अपने स्टेडिस्टिकल डिपार्टमेंट के संबंध में उत्तर रेलवे प्रशासन का नैमित्तिक अधिकारी यूनियन सिद्ध की 20-2-82 से चौकरी समाप्त करने का कार्यवाही चलाया है? यदि नहीं तो कर्मचारियों कि अनुचित का हकदार है?”

2. कॉन्फ्लिक्ट के हाथ श्रम मंत्रालय भारत सरकार के आदेश से सेवा समाप्ति की तिथि 20-2-82 की बजाय 20-2-83 तारीख को गई।

3. उल्लेखित रैफरेंस प्राप्त के पश्चात् इसे न्यायाधिकरण में पंजीकृत किया गया और समय परकारान को उपस्थित धाकर अपने क्लेम व अवकाश करने के लिए नोटिस जारी किये गये। रेलवे केन्द्रिय लेबर यूनियन बीकानेर के उनके अधिकृत प्रतिनिधि श्री अरविन्द सिंह द्वारा निम्न स्टेडिमेंट आफ क्लेम प्रस्तुत किया। यह कि श्रमिक यूनियन सिद्ध श्री सुकन सिंह आदी को दिनांक 20-4-80 को दैनिक वेतन भोगी कर्मचारी के रूप में उत्तर रेलवे जोधपुर की स्टेडिस्टिकल शाखा में नियुक्त हुआ था। आगे स्पष्ट किया कि कर्मचारी के एक वर्ष में 240 दिन से अधिक काम करने वाला औद्योगिक कर्मचारी हो गया था। आगे

स्पष्ट किया कि प्राथी श्रमिक की सेवा 20-2-83 को समाप्ति की गई तो छंटनी के बतौर समाप्त हुई। आगे व्यक्त किया कि छंटनी के समय प्राथी को 7 रु. प्रतिदिन वेतन मिलता था। और उसकी सेवा समाप्ति अनुचित अनधिकृत रूप से की गई है। क्योंकि उसे छंटनी किये जाने से पूर्व प्राथी श्रमिक को एक माह का नोटिस नहीं दिया गया न ही नोटिस अवधि का वेतन दिया गया। उसकी सेवा समाप्ति करने हुए उसे छंटनी का मुआवजा भी नहीं दिया गया एवं भारत सरकार के निर्धारित परिपत्र में प्राथी श्रमिक की सेवा समाप्ति की सूचना नहीं भेजी गई तथा पहले आगे प्रोछे जाये के सिद्धान्त को पर्याप्त पर्याप्त नहीं की गई और न ही वरिष्ठता को ध्यान में रखा गया। आगे स्पष्ट किया कि प्राथी की सेवा समाप्ति करने का कोई आधार नहीं था। और अंत में प्रार्थना की कि प्राथी श्रमिक की सेवा समाप्ति का आदेश निरस्त किया जावे और सेवा समाप्ति के दिनांक 20-2-83 से पुनः सेवा में बहाल किये जाने की शिथि तक का उसे वेतन दिया जाय।

4. अप्राथीगण की ओर से अधीक्षक (सांख्यिकीय) उत्तर रेलवे जोधपुर ने निम्न उत्तर स्लेम प्रस्तुत किया। यह कि प्राथी श्रमिक औद्योगिक विवाद अधिनियम, 1947 के तहत औद्योगिक कर्मचारी नहीं है। प्राथी के स्टेडिमेंट आफ क्लेम पर विचार करने का अधिकार इस न्यायाधिकरण को नहीं है। इसके अतिरिक्त स्टेडिमेंट आफ क्लेम की धारा सं. 1 को नकारते हुए यह स्पष्ट कि प्राथी को मुख्यालय बड़ौदा हाऊस, नई दिल्ली के आदेश सं. 803 ई/267 एच-ई. III चतुर्थ श्रेणी दिनांक 24-4-80 के आधार पर सौत माह के लिए पानो पिलाने हेतु सीजनल वाटरमैन के पद पर अस्थाई रूप से स्टेडिस्टिकल शाखा उत्तर रेलवे जोधपुर में नियुक्ती दी गई जो नियुक्ति पत्र प्राथी को दिया गया था उसमें यह स्पष्ट लिखा गया था कि उनकी नियुक्ति सौ माह के लिए है तदनुसार मुख्यालय के आदेश दिनांक 21-7-80 के प्राप्त होने पर उसकी सेवा अवधि 30-9-80 तक बढ़ा दी गई थी एवं प्रकार प्राथी को उसकी सेवा समाप्ति की सूचना दी जाकर उसके हस्ताक्षर प्राप्त किए गए थे। ऐसी सूचना में उसकी नोटिस दिया जाना आवश्यक नहीं था। इस संबंध में यह भी ध्यान दिया कि इस प्रकार प्राथीश्रमिक को दिनांक 22-12-80 से 28-2-81 तक, 30-4-81 से 30-9-81 तक 2-11-81 से 1-12-81 तक, 6-2-82 से 13-2-82 तक व 15-4-82 से 30-9-82 तक तथा 20-12-82 से 19-2-83 तक सीजनल वाटरमैन तथा पोल खल्लासी के रूप में दैनिक वेतन पर रखा गया। आगे यह एतराज लिया कि प्राथी श्रमिक ने कभी भी 240 दिन तक निरन्तर कार्य नहीं किया। उसकी नियुक्ति समय समय पर निश्चित समय के लिए बतौर वाटरमैन अथवा फोल्ड खल्लासी के पद पर मुख्यालय के आदेश द्वारा की जाती है रही और नियुक्ति अवधि समाप्ति के बाद उसकी नियुक्ति स्वतः ही समाप्त हो जाती थी। ऐसी सूचना में प्राथी का यह कहना गलत है कि उसकी सेवा समाप्ति की सूचना नहीं दी गई। यह गलत होना कहा कि उसकी सेवा समाप्ति बतौर छंटनी के की गई हो। 19-2-83 तक ही उसके पद की स्थापना थी और उसकी स्थापना के पश्चात् उसे आगे रखा जा सकता था। आगे यह भी एतराज लिया कि रेलवे प्रशासन के नियमानुसार मोसमी आकास्मिक लेबर को एक माह का नोटिस दिया जाना आवश्यक नहीं था। श्रमिक को यह बता दिया गया था कि उसे एक निश्चित अवधि के लिए रखा जा रहा है। अंत में यह प्रार्थना की कि प्राथी का क्लेम निरस्त किया जावे।

5. प्राथी श्रमिक यूनियन सिद्ध ने अपने क्लेम की सम्पुष्टि में स्वयं का शपथपत्र पेश किया जिसको इस न्यायाधीश द्वारा सत्यापित किया गया। प्राथी श्रमिक से रेलवे के अधीक्षक ने प्रतिपरीक्षण किया। प्राथी क्लेम की तरफ से रेलवे की ओर से कफिलेश्वर गुप्त कास्ता प्रसाद सांख्यिकीय रेलवे विभाग जोधपुर ने अपना शपथ पत्र प्रस्तुत किया जिसको इस

व्यावधिकरण द्वारा स्थापित किया गया। गवाह से प्राप्ति के अधिकृत प्रतिनिधि ने जिरह की। रेलवे की ओर से दूसरा गवाह शीलान पुत्र नाथू ने अपना शपथ पत्र प्रस्तुत किया जिसे व्यावधिकरण द्वारा स्थापित किया गया। प्राप्ति अधिक के अधिकृतता ने इस गवाह से जिरह की और अनयो साक्ष्य समाप्त की।

6. मैंने बहुत योग्य अधिकृत प्रतिनिधि प्राप्ति युनियन एवं योग्य अधिकृत अनयो रेलवे सुनी है एवं उनकी लिखित बहम पर भी सौ कर दिया है। पत्रावली की ध्यान पूर्वक मैंने अवलोकन किया।

7. सर्वप्रथम उस व्यावधिकरण के समक्ष विचारणीय प्रश्न यह है कि—

(1) आया सेवा समाप्ति दिनांक 20-2-83 से पूर्व एक कलैण्डर वर्ष में प्राप्ति ने 240 दिन से अधिक वनोर आकस्मिक श्रमिक काम कर निरन्तर कार्य करने वाला औद्योगिक कर्मकार हो गया था?

(2) आया प्राप्ति श्रमिक पुनः मिह को सेवा समाप्ति अवधि छंटनी की परिभाषा में आती है।

(3) अनुप्राप्य।

8. प्रथम विचार विचार इस संबंध में है कि आया दिनांक 20-2-83 से पूर्व प्राप्ति श्रमिक पुनः मिह राटो ने 240 दिन से अधिक निरन्तर कार्य कर या इस प्रकार 240 दिन से अधिक निरन्तर कार्य करने वाला औद्योगिक कर्मकार हो गया था। प्राप्ति के स्टेटमेंट आफ क्लेम में यह निश्चय है कि 26-4-80 को प्राप्ति श्रमिक वनोर आकस्मिक कर्मकारों के रूप में दैनिक वेतनभोगी श्रमिक के रूप में स्टेटिकल शाखा उत्तर रेलवे जोशपुर में नियुक्त हुआ था और आगे यह व्यक्त किया कि उसकी सेवा 20-2-83 को समाप्त की थी। इस संबंध में अप्राप्ति रेलवे के गवाह कलैण्डर सहाय ने उसके शपथ पत्र में यह स्वीकार किया है कि प्राप्ति श्रमिक को 24-4-80 से तीन माह के लिए 26-4-80 से 24-7-80 तक के लिए स्थानिय मार्फेट रेट के आधार पर उसे वनोर आकस्मिक कर्मकारों के नियुक्त किया था और आगे यह भी स्वीकार किया कि 19-2-83 तक अलग अलग स्पेल में वनोर सीजनल वाटरवैन के उसने कार्य किया। रेलवे की ओर से यह स्पष्ट तौर से कहा गया है कि मिनट मिनट समय में प्राप्ति श्रमिक को अलग अलग समयावधि में से चतुर्थ श्रेणी कर्मकारों के रूप में दैनिक वेतन भोगी के रूप में कार्य किया। यह निश्चय है कि प्राप्ति श्रमिक ने 19-2-83 तक कार्य किया है और भिन्न भिन्न अवधियों में उसने कार्य किया। इसको प्राप्ति श्रमिक स्वयं ने उसने बहाने में इस प्रकार स्वीकार किया है कि उसने 15-4-82 से 30-9-82 तक और 20-12-83 से 19-2-83 तक रेलवे में नौकरी की और उसने यह भी माना है कि उसने लगातार नौकरी नहीं की। याच बाब में गैप दिया गया और उसने उन्होंने इसका दिलाकर दूसरे दिन वापिस दरखास्त लिखाकर काम पर लिया। इस संबंध में रेलवे के गवाह कलैण्डर सहाय के प्रतिस्तरक्षण में यह आया है कि 19-2-82 से 19-2-83 तक की अवधि में प्राप्ति श्रमिक ने 205 दिन काम किया था। अगर इस संबंध में गवाह के प्रतिस्तरक्षण में यह भी जाहिर हुआ है कि दिनांक 13-4-82 को प्राप्ति श्रमिक ने अपना स्वीका प्रस्तुत किया और नये प्रार्थना पत्र दिनांक 15-4-82 को नये सिरे से उसे काम पर लिया गया। इस प्रकार प्राप्ति श्रमिक को कार्य की यह अवधि 15-4-82 से प्रारम्भ होकर 19-2-83 तक हो जाती है और इस अवधि के अन्दर यह दोनों पक्षों ने स्वीकार किया है कि प्राप्ति श्रमिक ने माह अप्रैल 83 में 15-4-82 से 30-4-82 तक 16 दिन कार्य किया। 1-5-82 से 31-5-82 तक 31 दिन, 1-6-82 से 30-6-82 तक 30 दिन, 1-7-82 से 31-7-82 तक 31 दिन, 1-8-82 से 31-8-82 तक 31 दिन व 1-9-82 से 30-9-82 तक 30 दिन, 20-12-82 से 31-12-82 तक 12 दिन, 1-1-83 से 31-1-83 तक 31 दिन, और 1-2-83 से 19-2-83 तक 19 दिन। इस प्रकार कुल सेवा समाप्ति से पूर्व

अंतिम बार 231 दिन कार्य दिवस बने हैं। इस प्रकार प्राप्ति श्रमिक यह प्रमाणित नहीं करा पाया कि सेवा समाप्ति से पूर्व दोष की ओर एक कलैण्डर वर्ष में 240 दिन उसने निरन्तर कार्य किया है और यह एक कलैण्डर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाले औद्योगिक कर्मकार हो जायेगा। इस प्रकार प्रथम विचार विचार निर्णीत किया जाता है।

9. अब देखना यह है कि आया दिनांक 20-2-83 को प्राप्ति श्रमिक को सेवा समाप्ति को की गई है यह अवधि छंटनी की परिभाषा में आता है? इस संबंध में योग्य अधिकृत प्रतिनिधि प्राप्ति ने बहस की है कि सेवा समाप्ति से पूर्व औद्योगिक विवाद अधिनियम के नियम-77 के तहत सेवा समाप्ति ने 7 दिन से पूर्व बरिष्ठता सूची अप्राप्ति विभाग ने जारी नहीं की। न ही केन्द्रिय सरकार को इस सेवा समाप्ति की सूचना दी। इस संबंध में योग्य अधिकृत प्रतिनिधि प्राप्ति ने यह भी बहस की कि यह सेवा समाप्ति अधिकृत अधिकृत द्वारा इसलिए नहीं की गई कि प्राप्ति श्रमिक का नियोजन डी.पी. ऑ. उत्तर रेलवे जोशपुर था। उन्होंने सेवा समाप्ति के लिए प्राप्ति श्रमिक को कोई नोटिस नहीं दिया। जैसे भी यह तर्क दिया कि जिस अधिनियम के द्वारा प्राप्ति श्रमिक को रखने की स्वीकृति दी गई थी उनके द्वारा प्राप्ति श्रमिक को सेवा समाप्ति नहीं की गई है और मंडल वेतन पर 25 (जी) सप्टिम नियम 77 औद्योगिक विवाद अधिनियम के तहत कोई बरिष्ठता सूची जारी नहीं की गई। इसलिए प्राप्ति श्रमिक को सेवा अप्राप्ति एवं अनुचित रूप से दिनांक 20-2-83 से समाप्त की गई है। इस संबंध में योग्य अधिकृत प्रतिनिधि प्राप्ति ने 1984 जे.ब. आई.सी. पृष्ठ सं. 645 पर अधिकृत किया कि औद्योगिक विवाद नियम 77 के तहत बरिष्ठता सूची निम्नलिखित एक आयात प्रावधान है और उते द्वारा ऐसा न करने से एक आयात प्रावधान का उल्लंघन किया गया है जिस कारण से प्राप्ति श्रमिक को सेवा समाप्ति अनुचित एवं अवैध है। प्राप्ति श्रमिक के अधिकृतता ने मंडल लाल बहाम आर.एच.आर.टी.सी. 1985 जे.ब.आई.सी. पृष्ठ सं. 480 पर भी अवलोकन किया जिसमें यह निश्चित किया गया है कि छंटनी के समय उसने शक्ति पूर्वी दिया जाया आवश्यक है। और यदि ऐसा नहीं किया गया तो भी प्राप्ति की सेवा समाप्ति अवैध थी।

10. योग्य अधिकृतता रेलवे ने बहस की कि प्राप्ति श्रमिक को हर बार नौकरी अवधि के लिए रखा जाता था और उस अवधि की समाप्ति पर उसकी सेवा स्वतः ही समाप्त हो जाती थी और इस संबंध में योग्य अधिकृतता रेलवे ने धारा 2 (ओ.ओ.) (बी.बी.) को निर्देशित करते हुए यह बहस की कि इस प्रकार प्राप्ति को जब भी लगाया जाता था उसका एक निश्चित समय के लिए नियंत्रित किया जाता था और उसकी सेवा एक संविदा के तहत लगती थी और उस अवधि की समाप्ति पर सेवा समाप्त हो जाती थी।

11. इस संबंध में यह स्पष्ट है कि धारा 2 (ओ.ओ.) (बी.बी.) अधिनियम स्व 1981 में दिनांक 18-8-84 से लागू की गई है एवं यह उक्त प्रावधान 18-8-84 को ही औद्योगिक विवाद अधिनियम में आया गया है जबकि प्राप्ति श्रमिक को सेवा समाप्ति 20-2-83 बाद बापहर से की गई है। ऐसा नहीं है कि यह संशोधित अधिनियम 18-8-84 से पूर्व से लागू किया गया हो जब ऐसा नहीं किया गया है तो यह प्रावधान 2 (ओ.ओ.) (बी.बी.) 18-8-84 से ही लागू होता है अगर प्राप्ति श्रमिक की सेवा 20-2-83 बाद बापहर से समाप्त हो गई थी ऐसी मूर्त में धारा 2 (ओ.ओ.) (बी.बी.) प्राप्ति श्रमिक के कस में लागू नहीं होता है। ऐसी कोई साक्ष्य भी पत्रावली पर नहीं आई है जिसमें यह प्रमाणित किया हो कि जितनी अवधि के लिए प्राप्ति श्रमिक की सेवा की जाती थी वह उत निश्चित अवधि की समाप्ति पर स्वतः समाप्त हो जायेगा। रेलवे के द्वारा पेश किये गये रिकार्ड में भी यह विवित है कि जितने दिनों के लिए प्राप्ति श्रमिक को सेवा लगाई जाती थी उससे भी कुछ आगे बढ़ा दी जाती थी। इसलिए मैं योग्य अधिकृतता अप्राप्ति रेलवे की इस बहस से सहमत नहीं हूँ कि श्रमिक की सेवा

12. अनुनोप: चूंकि विचारण बिंदु सं. 1 व 2 प्रार्थी श्रमिकों के हक में निर्णित किये गये हैं और प्रार्थी श्रमिक की सेवा समिति 20-2-83 से प्रार्थी छंटनी में पाई जाती है इसलिए प्रार्थी श्रमिक छंटनी की तिथि से पुनः सेवा में मिलने के लिए सहित महाल होने का अधिकारी पाया जाता है। अतः उपरोक्त विवेचन के आधार पर ब्रॉड विन्स प्रकार से पारित किया जाता है कि:-

प्रताप सिंह यादव, नवीनोन्नत

का.आ. 495--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रिय सरकार पश्चिम, रेलवे, बम्बई के प्रभावतः के सम्बन्ध निषेधाज्ञाओं और उनके कर्मचारियों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिग्रहण, जयपुर के पंचपद का प्रकाशित करा है, जो केन्द्रिय सरकार के 31-1-90 को प्राप्त हुआ था।

परिशिष्ट

उपस्थिति :- माननीय न्यायाधीश श्री प्रताप सिंह यादव,

(ધ.ર. એચ. જે. એસ.)

सी. प्रार्थ. टी :- 46/85

मध्य

युद्ध मिह खलसी टिकट नं. 21260/6 मशीन शप खाकी कलखाना
मिनेन, द्वारा पश्चिम रेलवे कर्मचारी परिषद अजमेर।

एवम्,

1. सह-प्रबन्धक, पश्चिम रेलवे, चर्च गेट, बम्बई ।
2. उपर मुख्य यांत्रिक इंजनीयर लोको, अजमेर ।
3. उप मुख्य यांत्रिक इंजनीयर लोको, अजमेर ।
4. उप-मुख्य कार्मिक अधिकारी लोको अजमेर ।

रफरेन्स :--अन्तर्गत द्वारा 10(1) (घ) एवम् अनुधारा 2(ए)
 औद्योगिक विवाह अधिनियम 1947,

उपस्थित :- 1. श्री प्रार. सी. नारंग प्रार्थी युनियन की ओर से उपस्थित ।

2. श्री एम. के. गोयल प्रार्थी यूनिन की ओर से उपस्थित ।
3. श्री जगदान स्वरूप, मयूर अधिवक्ता अप्रार्थी--गण उपस्थित ।
4. दिनांक अथर्व :- 20-7-89

अथा ३

श्रीमत् मन्त्रालय भारत सरकार के डेस्क अधिकारी ने जरयि आशा सम्बार एल-41012(3)/85-डी 11 (बां) दिनांक 9-12-85, निम्न विवाद अस्थांस धारा 10(1) (डी) एम्. उप धारा 2(ए) औष्ठीयिक विवाद अधिनियम 1947, वेस्ते अधिनियमार्थ इस श्वायाधिकरण को भेजा।

“Whether the action of the Western Railway Administration in dismissing Shri Budh Singh, Khalassi T. No. 21260 from service with effect from 6th March, 1982 is legal and justified? If not, to what relief the workmen concerned is entitled to?”

प्रार्थी श्रमिक वृद्ध मिह जिसे तत्कालीन प्रार्थी श्रमिक लिखा जायेगा कि धार से गृहनिर्माण के संयुक्त मण्डल मंत्री यजमन ने स्टेटमेंट आफ क्वेश्चन निम्न प्रकार से प्रस्तुत किया :-

वह कि पश्चिम रेलवे कर्जेश्वरी परिषद एक पञ्जीकृत संस्था है। इस संस्था ने औद्योगिक विचार अधिनियम 1947, की धारा 32 के अन्तर्गत हड़ताल का नोटिस दिया था। जिसकी समझौता बर्ता असफल रही। प्राथी श्रमिक बुद्ध सिंह पर रेलवे प्रशासन की ओर से एक आरोप लगाया था कि वह पूर्व स्व.कृति के अन्तर्गत रूप से अनुपस्थित रहा। इस सम्बन्ध में यह व्यक्त किया कि वर्ष 1978 में 57 दिन 1979 में 70 दिन एप्रैल 1980 में 31-10-80 तक 135 दिन वह अनुपस्थित रहा। इस सम्बन्ध में स्टेट मेन्ट आफ क्लेम में यह तहरीर किया गया कि प्राथी बुद्ध सिंह के पेट में तकलिक रहते थे। जिसने रेलवे अस्पताल अजमेर में धर्ती रह कर अग्रवा इलाज कराया परन्तु रेलवे अस्पताल के डाक्टर उसकी ठीक करने में असफल रहे।

बाप में प्राणी श्रमिक को जबावर लाल नेहरू अस्पताल में भेज, जहाँ उसके पेट का ऑपरेशन हुआ परन्तु वह ठीक नहीं हुआ। तत्पश्चात् प्राणी श्रमिक ने उसका इलाज प्रारब्ध डॉक्टरों से कराया फिर वह ठीक हो पाया। आगे आरोप लगाया कि विभागीय जांच के दौरान श्री बृद्ध सिंह

को पूरी सुविधा नहीं दी गई। उसे बिनाबीब जाँच में दूसरा प्रतिनिधि बनाने का अवसर नहीं दिया गया और उसे सेवा से पृथक् कर दिया।

आगे यह भी जाहिर किया गया कि प्राचीन श्रमिक ने सभी रेलवे अधिकारियों को पुनः रेल सेवा में लेने के लिए प्रार्थना-पत्र दिये। परन्तु उसे नौकरी पर नहीं लिया। इस सम्बन्ध में यह भी कहा कि प्राचीन श्रमिक रेलवे अस्पताल में 5-6-74 को रेलवे अस्पताल में भर्ती हुआ। 8-6-74 रेलवे डाक्टरों ने जवाहर लाल नेहरू अस्पताल अजमेर भेजा। प्राचीन श्रमिक की अस्थिरता फट गयी। 19-8-74 तक वह अस्पताल में रहा। दिनांक 2-9-74 को पुनः वह डिप्टी पुनः गया। उसने भारतीय आयुर्वेदिक शोधालय अजमेर में ईलाज कराया। आगे स्टेट मेन्ट आफ क्लेम में अंकित 10 व्यक्तियों के बारे में कहा गया। इन्हें भी नौकरी से निकाल दिया था परन्तु पुनः रेल सेवा में ले लिया है। आगे प्रार्थना की कि प्राचीन श्रमिकों को पुनः रेलवे सेवा में लेने का आदेश दे। और दिनांक 6-3-82 से निर्णय होने तक प्राचीन को डिप्टी पर माना जायें।

उप-मुख्य यान्त्रिक इंजिनियर लोको अजमेर प्राचीन को स्टेट मेन्ट आफ क्लेम का उत्तर रेलवे ने निम्न प्रकार में दिया।

यह कि प्राचीन यूनिवर्सल रेल प्रशासन द्वारा मान्यता प्राप्त नहीं है। यूनिवर्सल द्वारा नोटिस दिया जाना वह समझौता कार्यावली होना स्वीकार किया। रेटेन्ट आफ क्लेम पैरा संख्या 2,3,4,5, को स्वीकार किया।

आगे यह व्यक्त किया कि प्राचीन श्रमिक बुद्ध सिंह को रेलवे प्रशासन द्वारा एस.एफ.एस. मेजर चार्ज शीट दिनांक 12-2-81 को दी गई थी। प्राचीन श्रमिक 17-11-80 से 23-1-81 तक अतिरिक्त रूप से अनुपस्थित रहने से रेलवे प्रशासन ने अनुशासनात्मक कार्यवाही की जाती रही है।

प्राचीन को द्वारा जो उसका रेलवे अस्पताल सरकारी अस्पताल तथा प्राइवेट डाक्टर से ईलाज करवाना लिखा उसे स्वीकार किया। इस सम्बन्ध में आगे यह व्यक्त किया प्राचीन ने प्राइवेट डाक्टर से ईलाज के सम्बन्ध में अवकाश प्राप्त करने के लिए रेल प्रशासन नियमों का पालन कतई नहीं किया। वल्कि प्राचीन ने रेल प्रशासन को धोखा देकर अपनी स्वतंत्रता की बीमारी के आधार छुट्टी का अनुचित लाभ उठाया। जैसा कि उसके स्वयं का प्रार्थना-पत्र 24-1-81 से स्पष्ट है।

प्राचीन व उसके प्रतिनिधि ने डी.ए. आर इन्कवारी में उपस्थित होने के सम्बन्ध में नोटिस दिये गये थे। किन्तु वे दिनांक 4-5-81 व 2-7-81 का नहीं आये। तथा फाईनल नोटिस 31-7-81 के पत्र द्वारा जिसमें तारीख 12-8-81 तक की गई उपस्थित नहीं आये। अतः एस. 1 नियम में उसके विरुद्ध डी.आर. कार्यवाही एक तरफ की गई।

आगे यह कहा कि प्राचीन श्रमिक ने अपनी प्रतिनिधि के बदलने के सम्बन्ध में कभी कोई प्रार्थना-पत्र रेल प्रशासन को नहीं दिया। डी. आर इन्कवारी के निर्णय के आधार पर प्राचीन का रेल सेवा से पृथक् कर दिया गया। इस आदेश के विरुद्ध प्राचीन ने ए.सी.एम. ई. (इन्फू) अपील का परन्तु वह खारिज की गई। तत्पश्चात् उस आदेश के विरुद्ध उसने सी. डब्ल्यू. ई. (सी.सी.जी) बोम्ब को रिट्यू के लिए पेश की। परन्तु वह भी खारिज की गई जिसका सुचना प्राचीन को 3-1-83 को दी गई थी। प्राचीन को सेवा सन्तुष्ट किया गया है वह अनुशासनात्मक रूप से अनुपस्थित रहने के लिए किया गया है।

आगे व्यक्त किया कि डी.ए.आर. की इन्कवारी उन्होंने व्यक्तियों के खिलाफ की जाया है जिनके विरुद्ध आरोप लगाये जाते हैं। तथा अपराध प्रमाणित होने पर नियम-नुसार प्रत्येक व्यक्ति वसूली किया जाता है।

आगे व्यक्त किया कि पैरा संख्या 11 में लिखे गये व्यक्ति का कोई सम्बन्ध इस विवाद से नहीं है। अतः में प्रार्थना की कि प्राचीन का स्टेट मेन्ट आफ क्लेम व्यव सही निरूपित किया जाय।

प्राचीन श्रमिक बुद्ध सिंह ने स्वयं का पत्र-पत्र उसके स्टेट मेन्ट आफ क्लेम की सम्पुष्टी में प्रस्तुत किया, जिसे उस स्वाधिकरण द्वारा सत्यापित किया गया। योग्य अधिवक्ता रेलवे प्रशासन ने प्राचीन श्रमिक से फिर की।

रेलवे प्रशासन की ओर से श्री प्रेम कान्त शर्मा पुनः श्री रामधीन शर्मा ने अपना पत्र-पत्र प्रस्तुत किया। जिसे रेलवे के अधिकृत प्रतिनिधि ने प्रतिपरीक्षा किया।

मैंने बहुत योग्य अधिकृत प्रतिनिधि प्राचीन श्रमिक एवम् योग्य अधिवक्ता रेल प्रशासन भेजे हैं। पलावर्तन का ध्यान पूर्वक अवलोकित किया है।

स्वाधिकरण के समक्ष विचारणीय प्रश्न यह हैं कि प्राचीन रेलवे रेलवे प्रशासन ने श्री बुद्ध सिंह इन्कवारी टोकन नं. 21260 की जो 6-3-82 से सेवा समाप्त की गई, क्या वह रेल एवम् रेल सेवा संगत थी? मौखिक प्रकरण में प्राचीन रेलवे प्रशासन के उत्तर क्लेम से यह स्पष्ट है कि प्राचीन श्रमिक को डी.ए.आर. इन्कवारी के निर्णय के आधार पर रेल सेवा से पृथक् किया गया। श्री डी.आर. इन्कवारी में प्राचीन श्रमिक के विरुद्ध आरोप उसके द्वारा अतिरिक्त रूप से अनुपस्थित रहने का था।

रेलवे प्रशासन की ओर से जो स्टेट मेन्ट आफ क्लेम प्रस्तुत किया गया है उससे यह तो स्वीकार किया है "प्राचीन ने अपनी स्वयं का ईलाज रेलवे अस्पताल सरकारी अस्पताल तथा प्राइवेट डाक्टर से करवाया" अब इसमें यह सुना है कि प्राचीन श्रमिक के विरुद्ध जो एक पक्षीय आदेश पारित किया गया है वह उचित था या नहीं आया उद्योग तारीख की जांच की प्राचीन श्रमिक को सुचना दी जा नहीं इस सम्बन्ध में हमें पलावर्तन पर प्राचीन इन्हें सत्य को गौर करना है। इस सम्बन्ध में प्राचीन श्रमिक बुद्ध की मान्यता काबिल गौर है। प्राचीन श्रमिक ने उसके पत्र-पत्र में लिखा है। वर्ष 1974 में मेरा अपरेशन पेट की प्रतिष्ठियों का रेलवे अस्पताल अजमेर में हुआ। उस पर टीक न होने पर मुझे नेहरू चिकित्सालय अजमेर में स्थानान्तरित कर दिया गया। वहाँ मेरी ईलाज चला एक महीने स्वस्थ हो रहा परन्तु पूर्ण स्वस्थ न होने पाने के कारण में समय-समय पर आवश्यकता होने पर मैं अवकाश से लेता परन्तु मुझे अवकाश नहीं मिलता था मेरा समय मेरी बीमारी को ठीक करने हेतु अनेक-अनेक डाक्टरों की शरण लेता। कभी आयुर्वेदिक, कभी हेमियोपैथिक, कभी एल-पैथी विधि से इलाज कराया था।

आगे व्यक्त किया कि जांच के दौरान उस जांच अधिकारी ने जांच पूरी करने के पश्चात् जांच की प्रतिनिधि देने सहित था वह नहीं दी गई। आगे यह भा. व्यक्त किया कि अधिकारी ने वर्ष 1981 में जांच चल रही थी तब उस जांच की सूचना प्राप्त नहीं की। जांच एक-तरफा चलती थी।

आगे यह व्यक्त किया कि प्राचीन श्रमिक की जांच की सुचना एक बार घर के पते से भिजवाई थी उसके पश्चात् वह जांच में उपस्थित हुआ था परन्तु आगे जांच का सुचना उसे एवम् उसके प्रतिनिधि को नहीं दी। गवाहों के पूर पढ़ने था उसके समक्ष दर्ज नहीं किये गये। इसके मध्य मुकदमा श्री प्रेम कान्त शर्मा ने यह व्यक्त किया कि अन्तिम जांच की कार्यवाही 4-8-81 को निवस थी जिसका सुचना भी प्राचीन स्वयं का थी परन्तु प्राचीन ने जानबूझ कर इस कार्यवाही में भाग नहीं लिया तथा अनुपस्थित रहा। जिसके कारण जांच अधिकारी निवसान्तर प्राचीन के बलाक एक तरफा कार्यवाही करने का वाद्य होना पड़ा।

यहां यह देखना है कि प्राचीन श्रमिक स्वयं का बताने के द्वारा विवेचना-निर्णय है कि श्री प्रेम कान्त शर्मा रेलवे के गवाह हैं। यहाँ श्री प्रेम कान्त शर्मा का प्रतिपरीक्षण काबिल गौर है जिसमें उनमें यह व्यक्त किया है कि इन्कवारी को सुविधा तो प्राचीन को तब दी गई थी अगर इलाज याव नहीं कि कब-कब इन्कवारी के लिए उपस्थित आये और कब उपस्थित नहीं आये इसके बारे में रिकार्ड पेश किया हुआ है। मुझे अपनी याद नहीं है।

कि इन्कवरी के लिए कितने पत्र भेजे गये। प्राची को लिखे और सूचना दी है यह सब रिकार्ड में प्रकृत है। पुराने रिकार्ड के अनुसार प्राची अनुपस्थित रहा तो इसके आधार पर इन्कवरी चालू होकर

प्रेम बाल गार्ग की जिरह से स्पष्ट है कि उसे इन बात का स्मरण नहीं कि कब कब इन्कवरी के लिए उपस्थित होने का उपस्थित नहीं होने के बारे प्राची श्रमिक को लिखा गया जो उसने 4-8-81 नियम तिथि का हवाला दे कर हाजिर होने की सूचना देना है यह विषय नहीं है जबकि प्राची स्वयं ने स्पष्ट तौर से कहा है कि जांच अधिकारी ने उसे जांच की सूचना एक बार घर के पते से भिजवायी थी और वह जांच में उपस्थित भी हुआ था परन्तु आगे की जांच की सूचना उसे वह उसके प्रतिनिधि को नहीं दी गई। वह गवाहों के पूरे बयान भी उनके सामने दर्ज नहीं किये गये। प्राची श्रमिक का बयान इस सम्बन्ध में अधिक महत्वपूर्ण वह सबल है और प्राची के अधिकृत प्रतिनिधि की इस बहस में सार है कि प्राची श्रमिक का घर का पता जांच अधिकारी के पास था। फिर भी उसे 4-8-81 के लिए सूचना नहीं दी। जांच से विदित है कि दिनांक 1-5-86 पहले तारीख जांच की पड़ी। प्राची की आरोप दिया गया जिसे उसने अस्वीकार किया। जांच में दिनांक 2-7-81 को प्रेम बाल गार्ग पुत्र मुखराज शर्मा के बयान उसके सामने हुए। जांच रिपोर्ट से यह जाहिर है कि 4-7-81 व 9-7-81, 16-7-81, 31-7-81 की सूचना मशीन शाप अधीक्षक को पत्र द्वारा दी, परन्तु उसे इसकी सूचना नहीं दी। दिनांक 4-8-81 को जांच अधिकारी ने एक तरफ कार्यवाही की। इसका प्राची श्रमिक को कोई नोटिस भिजवा प्रमाणित नहीं होता है न ही प्राची श्रमिक रजिस्टर पत्र द्वारा या समाचार पत्र के माध्यम से कोई सूचना भेजी गयी। इस प्रकार प्राची की अनुपस्थिति में इन्कवरी आफिसर ने श्री श्रीम प्रकाश सोमानी व प्रदाम लाल के बयान कराये जो विधि विरुद्ध थे। और बिना प्राची को सूचित किये जो एक तरफ से जांच की इस जांच के फलस्वरूप : 6-3-82 को प्राची श्रमिक को सेवा बर्खास्त किया वह आदेश उचित एवम् न्याय संगत प्रकृत नहीं होता है। अतः इन्कवरी प्राची श्रमिक के फेवर एण्ड प्रॉवर नहीं पाई जाती है। प्राची श्रमिक को 4-8-81 का नोटिस 31-7-81 को जहाँ वह काम करते थे वहाँ भेजना जाहिर आया है मगर इसकी तामिल प्राची पर होता पाई नहीं जाती है। श्रमिक की ओर से 24-1-81 को उसकी पत्नी की बीमारी का प्रमाण-पत्र पेश किया जाना प्रमाणित है। अप्राची रेलवे प्रशासन की ओर से बुद्ध सिंह सधम् का आरक्षण होता उनके द्वारा रेलवे अस्पताल सरकारी अस्पताल व्यावर आवे में हलाक करवाना माना गया है फिर उनकी पत्नी की बीमारी का सर्टिफिकेट पेश किया गया है ऐसी सूरत में उसे अनुपस्थित बिना कारण नहीं कही जा सकती। प्राची के विरुद्ध जांच अनुपस्थित एवम् अनियत पाई गया है इस कारण से उनकी सेवा समाप्तनायम रखे जाने योग्य नहीं है। अतः प्राची के पक्ष में अपाई इस आदेश का पारित किया जाता है।

पश्चिम रेलवे प्रबन्ध-गण द्वारा बुद्ध सिंह खन्करी टोका नं. 21260 की सेवा दिनांक 6-3-82, समाप्त करता वैध एवम् उचित नहीं है। प्राची बुद्ध सिंह दिनांक 6-3-82 से पुनः सेवा में बहाल होने योग्य है और वह दिनांक 6-3-82 से बहाल होने की तिथि तक सेवा समाप्ति से पूर्व पद का नियमानुसार वेतन बतौर ऐरियर प्राप्त करेगा। और इस दौरान में अन्य कोई लाभ अर्जित हुए, हो तो भी वह पाने का अधिकारी होगा।

पचाट की प्रतिनिधि केन्द्रीय सरकार को वास्ते प्रकाशनाय भेजी जाये।

प्रताप सिंह यादव, न्यायाधीश
[सं. एन-41012/3/85-डी-II-वी (भाग)]

गढ़ के प्रबन्धन के सम्बन्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट का प्रकाशित करती है, जो केन्द्रीय सरकार के 31-1-90 का प्राप्त हुआ था।

S.O. 496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Suratgarh and their workmen, which was received by the Central Government on 31-1-90.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

सी.आई.टी. 36/85

रेलवे फीजुबल नंबर यूनिशन डागा स्कूल के पास, बीकानेर।

—प्राची

बनाम

(1) द सीनियर सिविल अभियंता (कन्स्ट्रक्शन अनुबंध नॉर्थ रेलवे सुरतगढ़ जिला श्री गंगानगर)

—अप्राची नियोजक

रंकरण अर्हगत धारा 10 (1)(घ) औद्योगिक अधि. 1947

उपस्थित श्री भरत सिंह बेंगलर—अधिकृत प्रतिनिधि प्राची युनिशन उपस्थित।

श्री जे.पी.एम.जैन—अधिकृत अप्राची नियोजक उपस्थित।

अर्थात्

भारत सरकार श्रम मन्त्रालय के सचिव अधिकारी ने उनके आदेश सं. एन.-41011(35) 81-सी. II (बी) दिनांक 12-8-83 निम्न विवाद अर्हगत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम 147 वास्ते अधिनिर्णयार्थ इस न्यायाधिकरण को भेजा।

“Whether the action of the Senior Civil Engineer (Construction-IV) Northern Railway, Suratgarh in terminating the services of the following three casual workers from the date mentioned against their names and is legal and also justified? What relief they are entitled to?”

S. No.	Name of the worker	F. Man	Date of Termination
1.	Shri Kishorilal	Shri Chanan Ram	15-11-83
2.	Shri Ramesh Chand	Shri Daunsi	15-11-83
3.	Shri Asgar Mahandi	Shri Tahasiv Masan	16-12-83

बाद प्राप्त निवेदन हमें इस न्यायाधिकरण में प्रस्तुत किया गया। बाद पंजीकरण उभयपक्षकारान को नोटिस जारी किये गये। अभिकरण किशोरी लाल, रमेशचन्द, असगर सिंह की सेवा समाप्ति के संबंध में उपाध्यक्ष रेलवे फीजुबल लेबर युनिशन निकट डागा स्कूल, ने स्टेटमेंट ऑफ फेम्स निम्न प्रकार से प्रस्तुत किया :—

1. धा. 496.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे, सुरत-

यह कि कर्मचारीगण किशोरीलाल पुत्र चाननराम, रमेशचन्द पुत्र श्री बीजीराम, असगर सिंह की सेवा समाप्ति के क्रमशः दिनांक

10-5-83, 9-5-83, 24-4-83 से निरीक्षण निर्माण नौदल रेलवे सुरसंगठ की देखरेख में अप्रार्थी नियोजक के नियोजन में भर्ती किया गया उनकी दैनिक वेतन भीगी कर्मचारी के रूप में लगाया गया। आगे व्यक्त किया कि कर्मचारी किशोरी लाल एवं रमेशचन्द्र वि. 15-11-83 से व कर्मचारी अमरग मँहदी की दिनांक 16-12-83 से मौखिक रूप से सेवा समाप्त किया गया है। उनके संबंध में आगे वे व्यक्त किया गया कि उक्त तीनों श्रमिकों की सेवाएँ बिना नोटिस दिये समाप्त कर दी गई। आगे वे भी ऐतराज किया गया कि इन कर्मचारियों की सेवा समाप्त करने से पूर्व उन जैसे कर्मचारियों को बरिष्ठता सूची घोषित नहीं की गई। पहले आगे पीछे जाने के सिद्धांत का पालन नहीं किया गया और उनकी सेवाएँ उनसे कनिष्ठ कर्मचारियों की सेवा में कायम रखने हुए समाप्त की गई। भारत सरकार को उनकी सेवा समाप्ति का सूचना निर्धारित समय पर निर्धारित फार्म में नहीं भेजा गई और उन्हें कोई मुआवजा भी नहीं दिया गया, अतः प्रार्थना की कि इन प्रार्थी श्रमिकों को पुनः रेलवे सेवा में कायम किया जाये और जिस दौरान में उनकी सेवा समाप्त की गई उसका वेतन भत्ता भी दिया जावे। अप्रार्थी नियोजक सीनियर सिविल इंजीनियर उत्तर रेलवे सुरसंगठ जंक्शन के द्वारा प्रार्थीगण के स्टेटमेंट का उत्तर निम्न प्रकार से प्रस्तुत किया गया :—

यह कि प्रार्थी श्रमिकगण किशोरीलाल, रमेशचन्द्र व अमरग मँहदी को नियुक्ति दिनांक क्रमशः 10-5-83, 9-5-83 व 24-4-83 को निरीक्षक निर्माण उत्तर रेलवे सुरसंगठ की देखरेख में अप्रार्थी नियोजन में किया जाना स्वीकार नहीं किया। इसे भी नकारा कि प्रार्थी श्रमिकगण अस्थायी स्टेटस प्राप्त कर गये थे आगे वे ऐतराज लिया कि प्रार्थी श्रमिकगण की सेवा समाप्त करने के लिये नोटिस देना आवश्यक नहीं था और इसे भी नकारा कि उनकी सेवाएँ अवैध एवं अनुचित रूप से समाप्त की गई। वे ऐतराज लिया कि प्रार्थीगण जिसाकि समाप्ति के समय इन जैसे कर्मचारियों की बरिष्ठता सूची घोषित करने की आवश्यकता नहीं थी। इसे भी नकारा कि प्रार्थीगण की सेवा अनफेयर लेबर प्रेक्टिस के कारण समाप्त की गई है। अतः प्रार्थना की कि प्रार्थीगण को स्टेटमेंट ऑफ क्लेम निरस्त किया जाये क्योंकि प्रार्थी श्रमिकों ने 240 दिन पूर्ण नहीं किये थे और इस प्रकार कोई 25 एक अधिनियम का उल्लंघन नहीं किया था।

प्रार्थीगण श्रमिकगण उनके स्टेटमेंट क्लेम की संपुष्टी में उन्होंने अपने सपथ पत्र प्रस्तुत किये। श्री किशोरी लाल पुत्र चानगराम ने एवं श्री अमरग मँहदी ने दिनांक 24-11-87 को उनके गणप पत्र न्यायाधिकरण के समक्ष प्रस्तुत किये हैं जिन्हें न्यायाधिकरण द्वारा स्थापित किया गया और अप्रार्थी नियोजक के योग्य अधिवक्ता ने इन दोनों गवाहों से प्रतिपरीक्षण किया सत्यतात् श्री रामचन्द्र में पुत्र श्री बख्शाम एवं श्री के. के. शर्मा पुत्र श्री वेदवध जर्ना ने उनके गणप पत्र पेश किये और प्रार्थी श्रमिकगण के अधिवक्ता ने इन दोनों गवाहों से जिरह किये। और अपनी साक्ष्य समाप्त की।

मैंने बहुत योग्य अधिकृत प्रतिनिध प्रार्थी श्रमिकगण एवं योग्य अधिवक्ता अप्रार्थीगण गयी है। पत्रावली का ध्यान पूर्वक अवलोकन किया है।

इस न्यायाधिकरण के समक्ष विचारणीय प्रश्न ये हैं कि आया सीनियर सिविल इंजीनियर (कन्स्ट्रक्शन) चतुर्थ उत्तर रेलवे सुरसंगठ के द्वारा आकस्मिक श्रमिकगण किशोरी लाल पुत्र चानगराम, रमेशचन्द्र पुत्र दांगी एवं अमरग मँहदी पुत्र श्री तांडजंज हप्ता की सेवा समाप्त उनके आगे अंकित निषेधों का करना क्या उचित एवं न्यायसंगत था। इन उपरोक्त प्रश्न को निपटार करने के लिये पैरवी के माध्यम को गौर करना है।

दोनों पक्षकारों की सहमति से ये तथ्य निविदापव पाये जाते हैं कि श्रमिक किशोरीलाल को 10-5-83 व रमेश चन्द्र को 9-5-83 को व अमरग मँहदी को 24-4-83 को उत्तर रेलवे में कार्य निरीक्षक निर्माण की देखरेख में अप्रार्थी नियोजक सीनियर सिविल इंजीनियर कन्स्ट्रक्शन

चतुर्थ नौदल रेलवे सुरसंगठ के अधीन नियोजित किया गया था और इन श्रमिकगण किशोरीलाल रमेशचन्द्र की सेवा दिनांक 15-11-83 को और अमरग मँहदी की सेवा दिनांक 16-12-83 को समाप्त की गई। ये भी तथ्य निविदाप है कि सेवा समाप्ति की तिथि से पूर्व किसी भी श्रमिक ने एक कलेण्डर वर्ष में 240 दिन निरन्तर कार्य नहीं किया था और इस प्रकार 240 दिन निरन्तर कार्य न कर सकने के कारण 25 एक अधि. का कोई उल्लंघन नहीं हुआ। अब केवल देखना यह है कि आया प्रार्थी श्रमिकगण की सेवा समाप्त किये जाने के कारण धारा 25 जी वी का उल्लंघन होता है या नहीं। इस संबंध में प्रार्थी श्रमिकगण की अधिकृत प्रतिनिधि ने बहम की कि धारा 25 एक व धारा 25बी प्रावधान स्वतंत्र प्रावधान हैं, धारा 25जी धारा 25 एक अधिनियम पर आधारित नहीं है जबकि अप्रार्थी नियोजक के योग्य अधिवक्ता ने ये बहम की कि जब धारा 25 एक का उल्लंघन इस प्रकरण में प्रमाणित नहीं होता है तो धारा 25 जी का उल्लंघन होने का प्रश्न ही पैदा नहीं है। इस संबंध में माननीय राजस्थान उच्च न्यायालय का दृष्टान्त 1978, डब्ल्यू एस एन (यू. सी.) पृष्ठ 223 काबिल गौर है। इस दृष्टान्त में ये विनिश्चित किया गया है कि जहाँ प्रतिपक्षी को छंटनी की गई और उसने जूनियर व्यक्तियों को नियोजन में रख लिया गया बिना कोई कारण जाहिर किये, उस हालत में धारा 25 जी के प्रावधान की परिपालना नहीं की गई इसलिये इन प्रावधानों की परिपालना नहीं किये जाने के कारण धारा 25 एक के प्रावधानों से छंटनी अवैध करार दी गई है। इस विवाद के संबंध में रेलवे के गवाह के. के. शर्मा के प्रतिपरीक्षण को गौर करते हैं तो उसमें ये स्वीकार किया है "सक्षम नियोजक ने इनकी कोई सीनियरिटी लिस्ट नहीं तैयार की थी, इसने स्पष्ट है कि तीनों प्रार्थीगण श्रमिकगण को सेवाओं समाप्त की गई उस समय नियोजक के द्वारा मंडल लेबल पर कोई बरिष्ठता सूची सात दिवस पहले नहीं तैयार की गई। इस संबंध में इण्डस्ट्रियल डिमण्ड सेट्टल करने 1957 का नियम 77 विचार किये जाने योग्य है। इस नियम 77 के अनुसार नियोजक पर ये दायित्व रखा गया है कि नियोजक एक अनुसूचित कैटेगरी के कर्मचारियों की बरिष्ठता सूची रिट्रैन्वमेंट के साथ समय तैयार करेगा और वे बरिष्ठता सूची उनकी सेवा में बरिष्ठता के मुभाबिक तैयार की जावेगी और उस बरिष्ठता सूची को ऐसे नोटिस बोर्ड पर आधिकारिक संस्थान के परिसर में कम से कम सेवा मुक्ति से सात दिन पहले लगाया जायेगा। चूंकि ये मौजूदा विवाद रेलवे कर्मचारियों से संबंधित है इसलिये यहाँ रेलवे एस्टेबलिशमेंट मैनुअल भी काबिल गौर है। रेलवे एस्टेबलिशमेंट के पैरा 2514 ए-4 के प्रावधान रखा गया है कि कर्मचारियों को छंटनी का साक्ष्य देने के लिये उनकी समान सेवा जो उन्होंने एक डिस्ट्रिक्ट आफिसर इन्चार्ज के डिप्टी-मैजिस्ट्रेट-इन-चार्ज के आधीन की है या एक मंडल कामिक अधिकारी के कार्य क्षेत्र के अन्दर की है वे सभी ही धारा 25 एक व धारा 25 एक एक एक एक के तहत गिनी जावेगी। इन रेलवे एस्टेबलिशमेंट के पैरा सं. 2114, ए-4 से वे स्पष्ट है कि रेलवे में कैजुअल श्रमिकों को रिट्रैन्व करने समक्ष मंडल के लेबल पर या एक ही मंडल कामिक अधिकारी के नीचे जितने आकस्मिक श्रमिक काम करते हों उनकी सीनियरिटी लिस्ट बनाना अनिवार्य है। यू.जे. (यू. सी.) 1985 पृष्ठ 1040 के पैरा 6 वहाँ काबिल गौर है जिसमें कि वे स्पष्ट एवं सुनिश्चित किया है कि धारा 25 जी अधिनियम में पहले आगे पीछे जाने के सिद्धांत को स्वीकार किया गया है जिसमें ये भी सुनिश्चित किया गया है कि भारतीय संविधान की धारा 14 के उल्लंघन को बचाने के लिये वैज्ञानिक और इक्विटेबल तरीका ये है कि रेलवे प्रांतिक आकस्मिक श्रमिकों को जो प्रांजैक्ट में काम करने हैं इन इर्जागत कार्य एक चयन लिस्ट तैयार करे और फिर उनकी अंतर्की सुविध सब से ज्यादा है उसे लगातार सेवा में उन्हें नियोजित करते जाये। माननीय उच्चतम न्यायालय की उक्त विनिश्चय को औद्योगिक विवाद केन्द्रीय नियम 77 की रोशनी में देखते हैं तो नियम 77 के उल्लंघन में यदि श्रमिकों का निकाला जाता है तो वह छंटनी अवैध पायी जाती है। यहाँ इस आई सी 1981 पृष्ठ 1196 भी काबिल गौर है जिसमें ये विनिश्चित किया गया है कि रेलवे के आकस्मिक कर्मचारी उनका अलग-अलग पोरिंग के हिमाक से कैटेगरी बनाना उचित नहीं है नियम 77 के प्रावधानों के पूर्ति की आवश्यकता है कि सभी कर्मचारियों की मंडल लेबल

पर एक कैटेगरी मानो जाये और नियोजन अलग-अलग जगह पर स्थान के आधार पर अलग से लिस्ट नहीं बना सकते और अलग-अलग लिस्टों के आधार पर जो सेवा समाप्ति की जाती है वह अवैध होती है। आई आर 1986 सुप्रीम कोर्ट पृष्ठ 132 में ये विनिश्चय किया गया है कि किसी भी कर्मकार का नाम दस से फाट दिया जाता है तो वह उसकी सेवा समाप्ति हो जाती है और ऐसी सेवा समाप्ति छंटनी की परिभाषा में आती है। उपरोक्त नियम 77 व 25 जी के प्रावधानों को परिपालना प्रार्थी श्रमिकगण जो सेवा समाप्ति की गई है उसके मौजूदा विवाद में प्रार्थी श्रमिकगण की सेवा समाप्ति अवैध पाये जाती है और वे अवैध सेवा समाप्ति छंटनी की परिभाषा में आती है। योग्य अधिवक्ता रेलवे ने बहुत की कि इन श्रमिकों को जिन अधिकारियों आई ओ डब्ल्यू एवं पी डब्ल्यू आई ने उनको लगाने का अधिकार नहीं था और जिस अधिकारी को श्रमिक को लगाने का अधिकार नहीं था इसलिए उसकी नियुक्ति प्रारम्भ से ही अवैध थी और ऐसे श्रमिकों को हटा देना अवैध छंटनी की परिभाषा में नहीं आता है। यहां आर एस आर 1988 (2) पृष्ठ 738 काबिल गौर है जिसमें ये विनिश्चय किया गया है यदि किसी श्रमिक को नियोजित करने का आदेश अवैध या कानूनी दृष्टि में गलत पाया जाता है तो भी उस व्यक्ति को हटाने से पहले सुनवाई का मौका दिया जाये मगर मौजूदा केस में इन तीनों श्रमिकों को सेवा समाप्ति से पूर्व कोई सुनवाई का अवसर भी नहीं दिया गया और यहां नैसर्गिक न्याय के सिद्धान्त का पालन नहीं किया गया है। रेलवे के अधिवक्ता की ओर से ये भी बहुत की गई है कि प्रार्थी श्रमिकगण को एक टी एन ए के स्वीकृत होने पर उन्हें एक विशेष कार्य और विशेष अवधि के लिये लगाया गया था और उसकी समाप्ति पर प्रार्थी श्रमिकगण की सेवा स्वतः समाप्त हो गयी। मैं योग्य अधिवक्ता प्रार्थी नियोजक की बहुत से सहमत नहीं हूँ अथवा तो धारा 2 (ओ.ओ.) के नये कलौज 2 (बी.बी.) उस समय लागू नहीं किया गया था ये प्रावधान सन् 1984 में जोड़ा गया है और इस प्रावधान को पीछे से लागू नहीं किया जा सकता। अथवा तो इस प्रकार की कोई संविदा प्रमाणित नहीं की गई है कि प्रार्थी श्रमिकगण को एक विनिश्चय आदेश के लिये लगाया गया और उन्हें वे बताया गया था कि उस अवधि के समाप्ति पर उनकी सेवा स्वतः समाप्त हो जायेगी, ऐसा नियोजक और श्रमिकों के बीच कोई मुद्दायदा प्रमाणित नहीं कराया गया है। आर एस डब्ल्यू 1988 (120 पृष्ठ 124 पर ये विनिश्चय किया गया है कि धारा 2 (ओ.ओ.) (बी.बी.) के नये प्रावधान की पीछे से लागू नहीं किया जा सकता क्योंकि ये प्रावधान संशोधन किये जाने वाले अधिनियम सं. 49 की 1984 से लागू किया गया था। मैं योग्य अधिवक्ता रेलवे के इस तर्क में भी सहमत हूँ कि प्रार्थीगण स्वयं सेवा छोड़ कर चले गये क्योंकि प्रत्येक श्रमिक के जोबकार्ड पर शब्द "उत्सर्जन" लिखा हुआ है। जब उन्होंने श्रमिक को उत्सर्जन दिया है तो वे स्वयं इसे छोड़ कर चले गये ये स्वीकारणीय नहीं है। के. के. शर्मा ने अपनी जिरह में इन शब्दों में माना है कि "इन श्रमिकों की सेवा समाप्ति की गई थी। इस स्वीकारावली से भी स्पष्ट प्रमाणित हो जाता है कि प्रार्थी श्रमिकगण की सेवा प्रार्थी नियोजक के द्वारा समाप्ति की गई। ये भी माना है कि इस सेवा समाप्ति की सूचना उन्होंने भारत सरकार को नहीं भेजी थी। इन प्रकार ये वकूकी प्रमाणित है कि तीनों प्रार्थीगण श्रमिकों की सेवा नियोजक द्वारा ही समाप्ति की गई और वह सेवा समाप्ति धारा 25 जी अधिनियम एवं नियम 77 औद्योगिक विवाद केन्द्रीय नियम 1957 के अन्वयेन में की गई जो सेवा समाप्ति रिट्रैन्मेंट की परिभाषा में आती है और रिट्रैन्मेंट 25 जी अधिनियम 77 के अन्वयेन में की गई इसलिए अवैध छंटनी पाई जाती है और इन अवैध छंटनी के कारण प्रार्थी श्रमिकगण पुनः सेवा में वेतन सहित बहाल होने के अधिकार पाये जाते हैं। दौरान बहुत श्रमिकगण के अधिकृत प्रतिनिधि ने ये स्वीकार किया कि किशोरी लाल को पुनः सेवा में नियोजित कर लिया गया है और वह रेलवे में कार्य कर रहा है। अतः प्रार्थीगण के पक्ष में इस प्रकार अवार्ड जारी किया जाता है।

यह कि सोनियर सिविल इंजीनियर कन्स्ट्रक्शन III (4) उत्तर रेलवे सुरगढ द्वारा प्रार्थी श्रमिक किशोरीलाल पुनः चानणराम, रमेशचन्द्र पुनः बोंजी की सेवा 15-11-83 को व असगर मैहवी की सेवा 16-12-83 को समाप्ति की व वैध एवं वाय संगत नहीं थी। अतः उनकी सेवा समाप्ति निरस्त की जाकर व उनकी सेवा समाप्ति की तिथि से पुनः सेवा में बहाल होने के अधिकार पाये जाते हैं। किशोरी लाल व रमेश चन्द्र 15-11-83 से व असगर मैहवी 16-12-83 से उनके पूर्वतः पथ व वेतन पर बहाल किये जायेंगे और ये उनकी उस सेवा समाप्ति की तिथियों से बहाल किये जाने की तिथियों तक पीछे का वेतन भत्तों सहित ऐडिटर प्राप्त करेंगे और सेवा समाप्ति की अवधियों के दौरान यदि उनको अन्य कोई और लाभ अर्जित हुए हों तो वे भी वही किशोरी लाल gainful employment अवधि का जो वेतन पा चुका है दोबारा वे पाने के अधिकारी होंगे। अवार्ड की प्रतिलिपि केन्द्रीय सरकार को वास्ते प्रकाशनार्थ भेजी जाये।

दिनांक : 28-10-89 ई.

प्रकाश सिंह यादव, अध्यक्ष

[सं. एन-11011/35/84-ई-II(बो)/(आन)]

का.आ. 497.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे, बीकानेर के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के बीच की प्रकाशित करती है, जो केन्द्रीय सरकार के 31-1-90 को प्राप्त हुआ था।

S.O. 497.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Bikaner and their workmen, which was received by the Central Government on 31-1-90.

परिमिट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

सी.आई.टी.सं. 48/84

रेलवे केम्पल खेवर युनियन, बीकानेर जिरने अरबिन्दातह वेगद उपाध्यक्ष, डाबा स्कूल के प.म, बीकानेर।

---प्रार्थी

वताम

- (1) महाप्रबंधक, नार्दन रेलवे, मुख्यालय बड़ौदा हाउस, नई दिल्ली।
- (2) मण्डल कार्यालय अधिकारी, नार्दन रेलवे, बीकानेर।
- (3) मण्डल अभियंता नार्दन रेलवे, बीकानेर।
- (4) सहायक अभियंता नार्दन रेलवे, बीकानेर।
- (5) सहायक अभियंता नार्दन रेलवे, हनुमानगढ़ जंक्शन जिला श्रीनगरगढ़।
- (6) सहायक अभियंता नार्दन रेलवे, मुख्यालय जिला श्रीनगरगढ़।

---प्रार्थीगण

रेकरेंज अर्न्तगत प्राय 10(1) (ब) औद्योगिक विवाद अधिनियम, 1947 का अन्वयः

श्री अरविन्द—अधिकृत प्रतिनिधि श्रमिकगण पृथ्वीराज मिश्र एवं प्रह्लाद कुमार श्रमिकगण।

श्री लालचन्द मेहरा - अप्रार्थीगण प्रार्थीगण

अवार्ड दिनांक 27-10-89

अवार्ड

भारत सरकार के श्रम मंत्रालय के डेस्क अधिकारी ने उनकी आशा संख्या एन-41012(39)/83-डी-II (सी) दिनांक 21-5-84 के द्वारा निम्न विवाद बान्ते अधिनियम अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम 1947 जिसे तत्पश्चात् अधिनियम लिखा जायेगा इस न्यायाधिकरण को प्रस्तुत किया :-

"Whether the termination of services of Shri Prithviraj Singh S/o Shri Assu Ram, N. B. Smith Khalasi, an employee working under the D.P.O.M. Railway, Bikaner with effect from 12th October, 1980, is justified and legal? If not, to what relief the workman is entitled?"

"Whether the termination of services of Shri Prahalad Kumar S/o Shri Ujagar Lal, casual workman under the D.P.O.M. Railway, Bikaner with effect from 5th August, 1981, is justified? If not, to what relief is he justified?"

बाद प्राप्ति निर्देशन इसे इस न्यायाधिकरण में पंजीकृत किया गया। प्रार्थीगण पृथ्वीराज एवं प्रहलाद कुमार की ओर से श्री अरविन्द सिंह उपाध्यक्ष रेलवे केंजुअल लेबर यूनियन बीकानेर ने श्रमिक पृथ्वीराज सिंह एवं प्रहलाद कुमार की ओर से स्टेटमेंट ऑफ फैक्ट्स निम्न प्रकार से प्रस्तुत किया :-

यह कि प्रार्थी श्रमिक पृथ्वीराज पुत्र आसूराम को दिनांक 15-8-79 को अस्थायी जैकस्मिथ खलसी के रूप में रेल पथ निरीक्षक महानजन ने नियुक्त किया पृथ्वीराज श्रमिक की सेवा दिनांक 13-10-80 से बाद दोपहर पथ निरीक्षक महानजन द्वारा समाप्त की गई। प्रार्थी श्रमिक प्रहलाद कुमार को दिनांक 24-8-1989 को रेलपथ निरीक्षक हनुमानगढ़ की सीमा क्षेत्र में नियुक्त किया और उसे दिनांक 9-5-81 से पथ निरीक्षक नोदरन रेलवे अहमदाबाद की सीमा क्षेत्र में नियुक्त किया गया जिसे दिनांक 6-8-81 को बाद दोपहर मौखिक आदेश से रेल पथ निरीक्षक अहमदाबाद ने टरमिनेशन कर दिया। आगे ये भी लिखा कि ये कर्मचारी एक कलेण्डर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करते वाले औद्योगिक कर्मचारी हो गये थे और उनकी अस्थायी रेल कर्मचारी चतुर्थ श्रेणी का स्टेटस दे दिया था आगे ये ऐतराज किया कि उक्त कर्मचारियों की सेवा अनुचित, अनियमित एवं अनाधिकृत रूप से समाप्त की और इस संबंध में ये भी जाहिर किया कि इन कर्मचारियों को एक साहू का टरमिनेशन नोटिस अथवा नोटिस ब्रेकन नहीं दिया न ही उन्हें छंटनी का मुआवजा दिया। इन जैसे कर्मचारियों की वरिष्ठता सूची घोषित नहीं की गई ना ही भारत सरकार की निर्धारित फार्म में छंटनी बाबत सूचना दी गई और पहले आये-पीछे गये के सिद्धांत की परिपालना नहीं की गई इस प्रकार जाहिर किया कि ऐसा करके धारा 25-एफ एवं जी अधिनियम का उल्लंघन किया गया। अतः प्रार्थना की कि उनकी सेवा समाप्ति की कार्यवाही को अनियमित एवं अनैतिक एवं अवैध करार दिया जाये एवं उन्हें सेवा समाप्ति से पूर्वत पद रेलवे में पुनर्नियोजित किया जावे और सेवा समाप्ति की अवधि से लगाकर उन्हें पुनः सेवा में लिये जाने तक का वेतन भत्ता भुगतान किया जाये।

अप्रार्थीगण की ओर से उनके अधिवक्ता श्री लालचन्द मेहरा ने उनर क्लेम दोनों प्रार्थी श्रमिकों के संबंध में अलग-अलग प्रस्तुत किये मगर उनके विरुद्ध डिफेंस लगभग एक जैसा ही दिया जिसमें ये ऐतराज लिया कि श्रमिकगण की बतौर आकस्मिक कर्मकार क बिना किसी लिखित मुद्दायदे के लगाया गया था चूंकि उनको एक विशेष कार्य के लिये ही लगाया गया था इसलिए उस कार्य की समाप्ति पर उनकी सेवाएं स्वतः ही समाप्त हो गयी, इसलिये उनकी सेवा समाप्ति छंटनी की परिभाषा में नहीं आती है। श्रमिकों ने अज्ञानक स्वतः ही कार्य छोड़ दिया

यद्यपि टी एल एउम समय भी बालू या और स्वतः सेवा छोड़ने के कारण भी उनकी सेवा मुक्ति छंटनी की परिभाषा में नहीं आती है। पृथ्वीराज के संबंध में स्टेटमेंट ऑफ फैक्ट्स के 6, 7, 8, 9 को गलत होना कहा और पृथ्वीराज के संबंध में ये प्लो की गई कि प्रार्थी श्रमिक ने एक कलेण्डर वर्ष में 240 दिन निरन्तर कार्य नहीं किया था और उसने औद्योगिक कर्मकार का स्टेटस प्राप्त नहीं किया था इसलिये उनके द्वारा धारा 25-एफ व जी अधिनियम का उल्लंघन किये जाने का प्रश्न नहीं उठता है। प्रार्थी श्रमिक अनुतोष पाने का अधिकारी नहीं है। प्रहलाद के संबंध में ये व्यक्त किया कि श्री प्रहलाद ने एक कलेण्डर वर्ष में 240 दिन निरन्तर कार्य नहीं किया था इसलिये वो औद्योगिक कर्मकार की परिभाषा में नहीं आता है। अप्रार्थी नियोजक की ओर से दिनांक 28-8-80 से 5-8-81 तक भिस-भिस अंतराल में कुल 158 दिन कार्य करता जाहिर किया इसलिये प्रार्थी श्रमिक ने कभी भी 240 दिन एक कलेण्डर वर्ष में लगातार काम नहीं किया और वह लगातार काम करने वाला औद्योगिक कर्मकार नहीं बना। ऐसी सूत्र में वह 25 बी, 25-एफ, व 25-जी अधिनियम का कोई फायदा नहीं उठा सकता। ये भी ऐतराज किया कि औद्योगिक विवाद केंद्रीय नियमों 1957 के नियम 2 (जी) (ii) (सी) के अनुसार कामिक अधिकारी श्रमिकों का नियोजक है बाकी अन्य प्रार्थीगण को गलत पार्टी बनाया गया है। अतः मैं प्रार्थना की है कि प्रार्थी श्रमिकगण के क्लेम को खारिज किया जाये। श्रमिकगण की ओर से केवल प्रहलाद कुमार श्रमिक ने अपना गणप पत्र पेश किया जिसे न्यायाधिकरण द्वारा स्वीकृत किया गया। श्रमिक से रेलवे के वकील श्री लालचन्द मेहरा ने जिरह की, रेलवे की ओर से श्री अरविन्द शर्मा पुत्र श्री जगन्नाथ शर्मा के द्वारा गणप पत्र प्रस्तुत किया जिसे न्यायाधिकरण द्वारा स्वीकृत किया गया। श्रमिक के योग्य अधिकृत प्रतिनिधि द्वारा गवाह से जिरह की। अप्रार्थी रेलवे की साख समाप्त हुई। नियोजक की ओर से प्रदर्न ई एम्स एन-1 को प्रमाणित कराया गया।

मैंने वहम योग्य अधिवक्तागण उपपक्षकारात सुनी है। पक्षावली का ध्यान पूर्वक अवलोकन किया है। यद्यपि दोनों श्रमिकगण प्रहलाद कुमार एवं पृथ्वीराज की ओर से स्टेटमेंट ऑफ फैक्ट्स प्रस्तुत किया मगर पृथ्वीराज बाबजूद कई बार अवसर दिये जाने से साक्ष्य में पेश नहीं किया गया केवल उसकी ओर से इतना ही प्रमाणित है कि सेवा समाप्ति से पूर्व एक कलेण्डर वर्ष में उसने 240 दिन से अधिक निरन्तर कार्य कर वह औद्योगिक कर्मकार हो गया था मगर उसकी सेवा समाप्ति बिना नोटिस दिये या बिना नोटिस अवधि का वेतन दिये व बिना मुआवजा दिये बना केंद्रीय सरकार की उसकी छंटनी की सूचना दिये या बिना कोई वरिष्ठता सूची घोषित किये उसकी सेवा समाप्त हो गई। इसके बारे में कोई साक्ष्य नहीं है। महज स्टेटमेंट ऑफ फैक्ट्स में उनके बारे में लिख देना प्रमाण नहीं है और पृथ्वीराज के संबंध में उसकी सेवा समाप्ति अवैध थी इसके बारे में भी साक्ष्य के अभाव में पृथ्वीराज शर्मा कोई अनुतोष पाने का अधिकारी नहीं है।

श्री प्रहलाद कुमार के संबंध में दोनों पक्षकारों की ओर से साक्ष्य दी गई है कि ये निर्विवाद है कि प्रार्थी प्रहलाद कुमार की प्रथम नियुक्ति 24-8-79 की बतौर केंजुअल लेबर के खलसी के पद पर कार्य निरीक्षक नोदरन रेलवे हनुमानगढ़ अंशकाल में की गई तत्पश्चात् उसकी 9-5-81 से रेल पथ निरीक्षक अहमदाबाद द्वारा नियुक्त किया गया। ये भी दोनों पक्ष की ओर से स्वीकार किया गया है कि उसकी सेवा समाप्ति 5-8-83 को बाद दोपहर रेल पथ निरीक्षक अहमदाबाद द्वारा की गई। ये दोनों पक्षकारों ने स्वीकार किया है कि प्रार्थी श्रमिक प्रहलाद कुमार की सेवा समाप्ति की गई उससे पूर्व एक कलेण्डर वर्ष में उसने 158 दिन ही कार्य किया है इस प्रकार श्री प्रहलाद कुमार द्वारा एक कलेण्डर वर्ष में 240 दिन निरन्तर कार्य न करने के कारण उसका क्लेम धारा 25-एफ व 25-बी के इन्डीडेन्ट पूरे न होने के कारण 25-एफ अधिनियम का परिधि में नहीं आता है मगर प्रार्थी की माध्य ये बखूबी प्रमाणित है कि उसकी सेवा समाप्त करने समय कोई वरिष्ठता सूची संजल के आधार पर प्रार्थी जैसे

की घोषित नहीं की गई और 25 जी अधिनियम एवं नियम 77 का उल्लंघन किया गया। धारा 25जी अधिनियम व नियम 77 के संबंध में अप्रार्थी रेलवे के गवाह अवधनी शर्मा का साक्ष्य भी शामिल गौर है। जिन्होंने अपने प्रतिपरीक्षण में ये स्वीकार किया है "हमारे रिकार्ड में प्रहलाद जैसे कर्मचारियों की डिबीजन वॉर्डन वरिष्ठता सूची नहीं है।" इससे ये स्पष्ट है कि अप्रार्थी रेलवे में डिबीजन वॉर्डन प्रहलाद जैसे कर्मचारियों की कोई वरिष्ठता सूची नहीं रखी गई है। इस गवाह ने यह भी स्वीकार किया है कि जब टी एन ए समाप्त होता है तो कर्मचारी की सेवा समाप्त हो जाती है और आगे ये भी स्वीकार किया है कि मंडल अभियंता व प्रहलाद के ऐसा कोई समझौता निश्चित अवधि में नहीं किया था कि टी एन ए की समाप्ति पर यात्रि 5-8-81 को उनकी सेवा समाप्त हो जायेगी क्योंकि इस गवाह ने ये भी स्वीकारा है कि टी एन ए स्वीकृत करने वाले अधिकारी एवं प्रार्थी श्रमिक प्रहलाद के बीच ऐसा कोई समझौता नहीं हुआ था कि टी एन ए की समाप्ति पर उनकी सेवा समाप्त समझी जायेगी केवल ये जरूर रेलवे की ओर से कहा गया है कि प्रहलाद श्रमिक की पी डब्ल्यू आई ने हटाया नहीं था वह स्वयं छोड़ कर चला गया मगर रेलवे के गवाह की जिरह से ये भी स्पष्ट है कि रेलवे की ओर से प्रार्थी के काम न छाने पर भी कोई नोटिस नहीं दिया कि वह क्यों और किस प्रकार सेवा छोड़ गया है। रेलवे के गवाह का ये कथन कि प्रार्थी श्रमिक स्वयं सेवा छोड़ गया था या स्वीकारणीय नहीं है। यदि प्रार्थी श्रमिक स्वयं सेवा छोड़ जाता तो उसे इस कदर तबादल व परेशानी उठाने की आवश्यकता नहीं थी व समझौता कार्यवाही में जाता और फिर मांगों मुकदमा लड़ता जैसे भी छंटनी की परिभाषा को देखते हैं तो उसमें विवाद इन कारणों के जबकि मनुष्य सुपर एम्प्लेशन की प्राप्ति कर सेवा निवृत्त होता हो या स्वेच्छा से सेवा निवृत्त चाहता हो या लगातार बीमारी के कारण सेवा मुक्त होता हो या अनुशासनात्मक कार्यवाही के फलस्वरूप कोई सेवा छोड़ता हो। इन गतों को छोड़ कर बाकी किसी कारण से सेवा समाप्ति की गई तो व छंटनी की तारीफ में आती है। छंटनी की परिभाषा में जो नई धारा 2 (ओओ) (बीबी) जोड़ी गई है न सन् 1984 में मंगोद्यन के तौर पर रिट्रेन्समेंट की परिभाषा में लगाई गई है। मगर सौजदा केस में सेवा समाप्ति 5-8-81 को हो गयी थी उस समय ये प्रावधान 2 ओओ व बीबी का लागू नहीं होता था इस प्रकार प्रार्थी श्रमिक की सेवा समाप्ति छंटनी की तारीफ में आती है और प्रार्थी श्रमिक की सेवा समाप्ति के समय कोई वरिष्ठता सूची मंडल के आधार पर घोषित नहीं की गई और न पीछे आये पहले जाये के सिद्धांत का पालन किया गया। इसलिये प्रार्थी को छंटनी अवधि पाई जाती है और इस प्रकार धारा 25 जी अधिनियम एवं केन्द्रीय औद्योगिक विवाद नियमों के नियम 77 का उल्लंघन पाया जाता है और प्रार्थी श्रमिक प्रहलाद पुनः सेवा में सेवा समाप्ति से पूर्वतन पर वेतन पर बहाल होने का अधिकारी पाया जाता है।

अवार्ड

(1) श्रमिक पृथ्वीराज सिंह की सेवा समाप्ति 12-10-80 को की गई उनके अवधि होने के संबंध में श्रमिक की ओर से कोई साक्ष्य प्रस्तुत नहीं हुई है इसलिये श्रमिक पृथ्वीराज सिंह पुत्र रामसूराम कोई अनुयोग पाले का अधिकारी नहीं है।

(2) यह कि श्री प्रहलाद कुमार पुत्र श्री उजागर लाल आकामिक श्रमिक की सेवा समाप्ति 5-8-81 को की गई वह धारा 25 जी अधिनियम एवं नियम 77 के उल्लंघन में की जाने के कारण अवधि पायी जाती है। प्रार्थी श्रमिक की दिनांक 5-8-81 से पुनः सेवा में सेवा समाप्ति से पूर्वतनः पद व वेतन पर बहाल किया जाये। प्रार्थी श्रमिक दिनांक 5-8-81 से सेवा में बहाल किये जाने की तिथि तक उपरोक्त अनुसार वेतन भत्ता ऐरियर्स के रूप में पायेगा और यदि इस अवधि के दौरान प्रार्थी को अन्य कोई लाभ प्रजित हुआ हो तो वह भी प्राप्त करने का अधिकारी होगा।

पंचाट की प्रतिनिधि केन्द्रीय सरकार को वामन प्रतापशर्मा अन्तर्गत धारा 17(1) अधिनियम भेजी जाये।

दिनांक: 27-10-89।

प्रताप सिंह यादव, न्यायाधीश
[सं. एन-41012/39/83-डी II (बी) (भाग)]

का.प्र. 498.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में केन्द्रीय सरकार उत्तर रेलवे बीकानेर के प्रबंधक के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशन करती है, जो केन्द्रीय सरकार को 31-1-90 को प्राप्त हुआ था।

S.O. 498.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Bikaner and their workmen, which was received by the Central Government on 31-1-90.

परिशिष्ट

रेल्वे इण्डस्ट्रियल ट्रीब्यूनल, जयपुर

सी.आई.टी. सं. 32/84

रेलवे केजुशन लेबर यूनियन, बीकानेर (श्री जैतूमिह द्वारा भरतसिंह मजामबी बागा स्कूल के पास, बीकानेर)

—प्रार्थी

विवरण

- (1) महाप्रबंधक, नोर्टन रेलवे, मुख्यालय बड़ौदा हाउस, नई दिल्ली।
- (2) मंडल कामिक अधिकारी, नोर्टन रेलवे, बीकानेर।
- (3) मंडल अभियंता (1) नोर्टन रेलवे, बीकानेर।
- (4) मंडल अभियंता (2) नोर्टन रेलवे, बीकानेर।
- (5) निर्माण निरीक्षक, प्रथम नोर्टन रेलवे, हनुमानगढ़ जंक्शन जिला श्री गंगानगर।
- (6) निर्माण निरीक्षक, द्वितीय हनुमानगढ़ जंक्शन।
- (7) निर्माण निरीक्षक, नोर्टन रेलवे, मातुलपुर जंक्शन जिला चुरू।

अप्रार्थीगण

रेफरेंस: अन्तर्गत बाग 10(1)(घ) औद्योगिक विवाद अधि०, 1947

उपस्थित: श्री अरविन्द सिंह—प्रार्थी यूनियन की ओर से उपस्थित
श्री नाग चन्द मेहरा अधिवक्ता—अप्रार्थीगण उपस्थित

अवार्ड दिनांक 27-10-89

अवार्ड

भारत सरकार के श्रम मंत्रालय के डेप्ट अधिकारी ने उनकी आज्ञा नं. एन-41012(30) 83-डी II (बी) दिनांक 8 फरवरी 1984 के जर्गिये निम्न विवाद इस न्यायाधिकरण को वामन अधिवर्णन अन्तर्गत धारा 10(1) (घ) औद्योगिक विवाद अधिनियम 1947 वामन अधिवर्णनार्थ भेजा:

"Whether the action of the Northern Railway Management in relation to the Bikaner Division, Bikaner in not appointing Shri Jethu Singh S/o Shri Sunder Singh, casual mason in permanent cadre of Mason in the Pay Scale of Rs. 260—400 is justified? If not to what relief is he justified?"

बाद प्राप्ति निर्देशक इसे हम व्यावहारिकरण में पेशकृत किया गया और उस पक्षधरता को नोटिस जारी करने के लिये आदेश दिया गया। प्राप्ति को नोटिस किया और बाद प्राप्ति नोटिस श्री भरतसिंह सेनार के द्वारा स्टेटमेंट ऑफ क्लेम निम्न प्रकार से पेश किया :

यह कि संबंधित कर्मचारी जेटुसिंह पुत्र श्री सुन्दरसिंह जाति राजपूत उम्र 52 साल की निर्माण निरीक्षक नौकरी से हटाने का जखान ने दिनांक 11-10-64 को श्री गणेशजी को केजुअर लेबर के बाद हनुमानगढ़ जखान पर भर्ती किया।

प्राप्ति अधिक जेटुसिंह ने दिनांक 16-1-81 तक कार्य निरीक्षक हनुमानगढ़ एवं निर्माण निरीक्षक नाडुनपुर को रेखांक में समक्ष-समक्ष पर कार्य किया। इस संबंध में आगे लिखा कि दिनांक 1-1-73 से प्राप्ति जेटुसिंह को 13-1-81 तक मेहनत के पद का वेतन भत्ता दिया गया। आगे बात किया कि प्राप्ति कर्मचारी की उपाधिगत दिनांक 13-1-81 तक मेहनत के पद पर निर्माण निरीक्षक प्रथम हनुमानगढ़ जखान के कार्यालय में कार्य नहीं। आगे स्टेटमेंट ऑफ क्लेम में बताया कि निर्माण निरीक्षक हनुमानगढ़ जखान ने श्री जेटुसिंह प्राप्ति कर्मचारी की खलासी के पद एवं वेतन मूखला 196-232 में कार्य करने के लिये मौखिक रूप से कहा। प्राप्ति कर्मचारी ने निर्माण निरीक्षक हनुमानगढ़ जखान से निवेदन किया कि वे सजा, रेल अधिकारी से विविध शर्तों के अभाव में उपाधिकाय का कार्य नहीं किया कार्य और उसे देगा था वेतन भत्ता घटा कर खलासी का वेतन भत्ता मूखला 196-232 नहीं दिया जाये। तत्पश्चात् निर्माण निरीक्षक प्रथम हनुमानगढ़ जखान ने जेटुसिंह से दिनांक 14-1-81 एवं 15-1-81 को भर्ती कार्य नहीं किया। अतः प्राप्ति अधिक उसका कार्य करने के लिये कार्य स्थल पर गया। तत्पश्चात् दिनांक 16-1-81 को जेटुसिंह प्राप्ति के मेहनत के पद का कार्य एवं वेतन रूप से 260-400 का काम लेने से निर्माण निरीक्षक प्रथम जखान से हटाने का जखान ने मौखिक रूप से इकार का दिया और उसे रेलवे कार्य पर लेने से इकार कर दिया। इस कारण से प्राप्ति कर्मचारी एवं उसके नियोजन के मध्य आर्थिक विवाद उत्पन्न हो गया। प्राप्ति ने भी लिखा कि प्राप्ति अधिक तीन वर्षों के अधिक समय से मेहनत का कार्य करने के आधार पर वह मेहनत के पद और इस पद की वेतन मूखला 260-400 में स्थापित करने लिये जाने के समक्ष लाभ उठाने का अधिकारी हो गया था। आगे ये भी तथा स्टेटमेंट ऑफ क्लेम में तैयारी किये कि प्राप्ति अधिक एक क्लेन्डर वर्ष में 240 दिनों में अधिक काम करने के आधार पर मेहनत के पद पर लगातार काम करने वाला अधिकारी कर्मचारी था। आगे ये भी जाहिर किया कि रेलवे प्रशासन इस प्राप्ति कर्मचारी जैसे कर्मचारियों को मेहनत के पद पर नौकरी के पदों पर लगाने के लिये 25 प्रतिशत कोटा निर्धारित किया है जिसे भी ये प्राप्ति कर्मचारी अपनी क्लेन्डर एवं योग्यता के आधार पर मेहनत के पद पर स्थायी रूप से लगातार काम करने का अधिकारी हो गया और ये भी एतराज किया कि इस कर्मचारी से कनिष्ठ कर्मचारियों को मेहनत लगातार गया। आगे ये भी एतराज किया कि प्राप्ति निर्माण निरीक्षक प्रथम हनुमानगढ़ जखान ने जखान, अनुचित एवं अव्यवस्थित रूप से प्राप्ति अधिक ने दिनांक 13-1-81 से काम लेना बन्द किया है और उसे मेहनत के पद पर काम लेने से इकार किया और मेहनत के पद से उसे सेवा समाप्त, पैसा करने से निर्माण निरीक्षक प्रथम हनुमानगढ़ का कोई अधिकारी नहीं है। प्राप्ति प्राप्ति की कि प्राप्ति अधिक उसकी योग्यता और क्लेन्डर के आधार पर केजुअर लेबर मेहनत के पद से स्थायी एवं नियमित मेहनत के पद एवं वेतनमान 260-400 में नियुक्त पाने का काम करने लिये था अधिकारी है।

प्राप्ति की ओर से स्टेटमेंट ऑफ क्लेम में ये भी व्यक्त किया कि कर्मचारी ने क्लेन्डर और स्थापित, जखान के काम में सी.एल.सी. 1/79 अनुबर्ता जेटुसिंह अतः उपाधिकाय में आदेश दिनांक 12-2-81 के आधार पर वेतन वेतन एवं वेतनमान के वेतन भत्ते के अवर की रकम 2121.55 रुपये नियोजक पक्ष द्वारा भुगतान की गई। प्राप्ति ये भी एतराज

जाहिर किये कि कर्मचारी को केजुअर लेबर के पद से हटाने में पूर्व सक्षम रेल अधिकारी द्वारा एक माह का सेवा समाप्ति का नोटिस नहीं दिया एवं नही नोटिस वेतन एवं छंटनी का मुआवजा दिया एवं अनुचित अव्यवस्थित रूप से मेहनत के पद पर काम करने से इकार किया। प्राप्ति कर्मचारी अपनी पूर्व सेवा के आधार पर मेहनत के पद पर स्थायी रूप से नियुक्त होने एवं काम करने का अधिकारी था। अंत में प्राप्ति की कि प्राप्ति अधिक जेटुसिंह पुत्र श्री सुन्दरसिंह को दिनांक 14-1-81 से लगातार स्थायी रूप से मेहनत के पद एवं वेतन 260-400 में काम माना जाये और इसी वेतनमान का वेतन भत्ता लगातार 14-1-81 से बढ़ाया जाये।

अप्राप्ति नियोजकमण की ओर से प्राप्ति के स्टेटमेंट ऑफ क्लेम का जवाब पेश किया गया जो द्विती में अनुवाद करने पर निम्न प्रकार है :— प्राप्ति के स्टेटमेंट ऑफ क्लेम के प्रथम चरण को सही होने से इकार नहीं किया गया। कुछ बातें इस पैरे में रिकार्ड से संबंधित होना कहा। स्टेटमेंट ऑफ क्लेम के पैरा सं. 2 को भी नकारा नहीं गया। पैरा संख्या 3 क्लेम स्टेटमेंट को रिकार्ड संबंधित होना कहा। चौथे पैरे में प्राप्ति अधिक के प्राप्ति पत्र का हवाला देते हुए ये स्वीकार किया कि प्राप्ति अधिक ने बतौर आकस्मिक अधिक के समय समय पर काम किया। पैरा सं. 5 को रिकार्ड संबंधित होना कहा और इसी प्रकार पैरा सं. 6 को भी रिकार्ड से संबंधित होना कहा। पैरा सं. 7 को सही होने से नकारा और इस संबंध में अतिरिक्त अभिवचन में तथा आगे लिखा कहा। पैरा सं. 8 स्टेटमेंट ऑफ क्लेम को भी स्वीकार नहीं किया। इसी प्रकार पैरा सं. 9, 10, 11 को भी स्वीकार नहीं किया और इस बात को नकारा कि प्राप्ति अधिक 260-400 का वेतनमान पाने का अधिकारी है। इस संबंध में ये भी कहा कि प्राप्ति अधिक 260-400 के वेतनमान के लाभ पाने का अधिकारी नहीं है। पैरा सं. 14 के संबंध में ये कहा कि प्राप्ति एक आकस्मिक अधिक था और आकस्मिक अधिक उस समय तक आकस्मिक अधिक रहता है जबकि स्कीमिंग कमेटी के द्वारा उसे स्कीम नहीं कर दिया जाता है, स्थायी तौर से रखने के लिये। इसी प्रकार पैरा सं. 15, 16, 18, 19, 20, 21 को नकारा। अतिरिक्त पक्ष में अप्राप्ति पक्ष की ओर से ये अभिवचन रखा गया कि प्राप्ति अधिक बतौर आकस्मिक मेहनत के समय-समय पर स्वीकृत बी.एल.ए. पर काम करवा रहा और जब वह टी.ए.ए. को स्वीकृति समाप्त हो गयी तो उस समय प्राप्ति अधिक को एडवॉकेट डिप्टी जखान सेजिकल आफिसर के समक्ष डाक्टर के कान के लिए बुलाया गया और खलासी काम करने के लिये और उसे चिकित्सा परीक्षण के लिए भी बुलाया गया था तो 19-11-89 को व 26-2-80 को ये नोटिस काम दे दिया कि वह ये काम करने के लिये इच्छुक नहीं है और वह चिकित्सा परीक्षण के लिये भी जाने को तैयार नहीं है। रेलवे प्रशासन प्राप्ति अधिक को खलासी के पद पर लगाने के लिये तैयार था परन्तु प्राप्ति अधिक ने ये तजवीज स्वयं स्वीकार नहीं की। इस संबंध में ये भी व्यक्त किया कि जबकि किसी अधिक को आकस्मिक रूप से दिनांक तैयारी मुआवजा निम्न काम पर लगाया जाता है एक विशेष कार्य करने के लिये, तो उस काम को समाप्त होने पर स्वतः ही इसकी सेवा समाप्त हो जाती है और इस प्रकार काम समाप्त होने पर उसकी छंटनी किया जाता नहीं कहा जा सकता। प्राप्ति की प्राप्ति पत्र नोन ज्योइण्डर मिस ज्योइण्डर ऑफ पार्टीज के नुकश से भी चलने योग्य नहीं है। इसलिये प्राप्ति की प्राप्ति पत्र पहले चलने योग्य नहीं है और वह कोई अनुतोष पाने का अधिकारी नहीं है।

प्राप्ति के स्टेटमेंट ऑफ क्लेम को संतुष्टी में प्राप्ति अधिक जेटुसिंह ने स्वयं का पक्ष पत्र प्रस्तुत किया जिसे इस व्यावहारिकरण द्वारा तैयार किया गया। रेलवे के वकील ने श्री जेटुसिंह से उसके पक्ष पत्र पर जिरह की। प्राप्ति की ओर से उसकी माध्य समाप्त की गई। अप्राप्ति नियोजक पक्ष को पक्ष में श्री अलबेलसिंह पुत्र श्री करनार सिंह ने अपना पक्ष पत्र प्रस्तुत किया जिसे इस व्यावहारिकरण द्वारा सत्यापित किया गया। प्राप्ति अधिक के अधिकृत प्रतिनिधि द्वारा रेलवे के इस गवाह से जिरह व गई है।

रेलवे की ओर से प्रलेख ई एक्स एम-1, ई एक्स एम-2 व ई एक्स एम-3 पेश किये गये। श्रमिक की ओर से उसका जोषकार्ड ई एक्स डब्ल्यू-1 उसके फोटो सहित एवं उसके कार्य दिवसों की तफसील से ही प्रस्तुत किया गया।

मैंने बहुत योग्य अधिकृत प्रतिनिधि प्राथी श्रमिक एवं योग्य अधिवक्ता अप्राथी नियोजकगण सुनी है एवं पञ्चावली का ध्यान पूर्वक अवलोकन किया है।

इस न्यायाधिकरण के समक्ष विचारणीय प्रश्न ये हैं कि प्राया रेलवे प्रबंधकगण बीकानेर डिवीजन, बीकानेर द्वारा श्री जेटूसिंह पुत्र श्री मुन्दरसिंह धाकस्मिक मेसन को मेसन के स्थायी काडर में वेतनमान 260-400 में नियुक्त न करना न्याय संगत था या नहीं अथवा नहीं था तो प्राथी किस अनुतोष को पाने का अधिकारी था।

उपरोक्त प्रश्न को निर्णीत करने के लिये अब हमें उभयपक्षकारान के साक्ष्य को गौर करना है। प्राथी श्रमिक जेटूसिंह पुत्र श्री मुन्दरसिंह ने इसके शपथपत्र में ये व्यक्त किया है कि दिनांक 11-10-64 को नोदर्न रेलवे की सेवा में उसे हनुमानगढ़ जंक्शन पर मेसन के कार्य पर नियुक्त किया था और उसे कार्य निरीक्षण प्रथम द्वारा उसे बर्कशाप में लगाया गया था। आगे उसने अपने शपथपत्र में ये भी सहरीर किया है कि उसने एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य करने के आधार पर लगातार काम करने वाला औद्योगिक कर्मचारी हो गया था। आगे ये भी व्यक्त किया कि उसने लगातार 16-1-81 तक मेसन का कार्य कार्यनिरीक्षक प्रथम हनुमानगढ़ एवं कार्य निरीक्षक सादुलपुर के बर्कशाप में किया। आगे ये व्यक्त किया कि उसे 1-1-73 से मेसन कार्य के आधार पर संशोधित वेतनमान में मेसन का वेतन 260-400 वेतन भत्ता दिया गया। आगे ये भी लिखा कि तत्कालीन कार्य निरीक्षक प्रथम हनुमानगढ़ ने उसे मौखिक रूप से ये कहा कि यह रेलवे की सेवा में रहना चाहता है तो उसे खलासी के पद एवं वेतनमान रुपये 196-232 के लिये डाक्टरी परीक्षण पास करना होगा। शपथकर्ता ने उस समय ये कहा कि शपथकर्ता मेसन का कार्य प्रारम्भ से ही कर रहा है और वह वर्षों में शपथकर्ता को मेसन पद एवं वेतनभत्ता दिया जा रहा है तो उसे खलासी पद पर लगाना अनुचित एवं अन्याय पूर्ण है। प्राथी श्रमिक ने उसके शपथ पत्र में उसकी नियुक्ति दिनांक 11-10-64 को हनुमानगढ़ जंक्शन पर मेसन का कार्य करने के लिये निरीक्षक प्रथम द्वारा किया जाना दिखाया है, इस संबंध में स्टेटमेंट ऑफ क्लेम के उत्तर के पैरा 3 में ये लिखा गया है कि ये रिकार्ड्स का विषय है जबकि अप्राथी नियोजक के गवाह जसवंतसिंह ने उसके शपथपत्र में ये स्वीकार किया है कि प्राथी श्रमिक की नियुक्ति स्वोक्त टी एल ए के आधार पर दैनिक वेतन भोगी मेसन पर की गई थी क्योंकि अप्राथी नियोजक की ओर से प्राथी का 11-10-64 को मेसन के पद नियुक्त किये जाने को उसी प्रकार चुनौती नहीं दी गई है और प्राथी की साक्ष्य बखूबी प्रमाणित है कि प्राथी जेटूसिंह पुत्र श्री मुन्दरसिंह राजपूत को 11-10-64 को कार्य निरीक्षक प्रथम हनुमानगढ़ जंक्शन द्वारा 11-10-64 को नियुक्त किया गया था। प्राथी श्रमिक ने उसके शपथ पत्र में ये भी व्यक्त किया है कि वह एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य करने के आधार पर लगातार काम करने वाला औद्योगिक कर्मचारी हो गया था और उसने 13-1-1981 तक लगातार मेसन का कार्य किया और दिनांक 14-1-81 व 15-1-81 को जब वह रेलवे में कार्य के लिये उपस्थित हुआ तो उसने मेसन का कार्य नहीं लिया गया और ना ही 16-1-81 बाव दोपहर उसकी सेवा समाप्त की गई। इस बयान के मध्य मुकाबिल ऐसा कोई साक्ष्य नहीं है कि प्राथी श्रमिक ने एक कलेण्डर वर्ष में 240 दिन से अधिक निरन्तर कार्य नहीं किया था और वह इस प्रकार कार्य करने वाला औद्योगिक कर्मचारी नहीं हो गया था इस तथ्य को भी नहीं नकारा गया है कि उसने 13-1-81 तक मेसन का कार्य नहीं किया हो। नियोजक की ओर से केवल ये कहा गया है कि टी एल ए की समाप्ति पर प्राथी को सी पी सी खलासी पर नियुक्ति दिये जाने हेतु चिकित्सा परीक्षण हेतु

भेजा गया और इस संबंध में उसे सीपी प्रदर्श ई एक्स एम-1 दिया गया परन्तु प्राथी श्रमिक ने निम्न कर दिया कि वह डाक्टरी में नहीं जाना चाहता है और उसे दिनांक 19-11-79 व 26-2-80 के पत्र प्रदर्श एम-3 के द्वारा लिखित रूप में दिया गया था कि वह डाक्टरी परीक्षा करायें तो उस संबंध में उसने ये जाहिर किया था कि वह डाक्टरी परीक्षण नहीं कराना चाहता है। और ये भी प्रतिरक्षा में कहा गया है कि प्राथी श्रमिक की छंटनी नहीं की गई थी। टी एल ए की समाप्ति पर उसकी सेवा स्वतः समाप्त हो गयी। अब ये देखना है कि क्या प्राथी श्रमिक के द्वारा खलासी के पद के लिये चिकित्सा परीक्षण नहीं कराया जाता अनुचित एवं गलत था। अप्राथी नियोजक की साक्ष्य से यह विदित है कि प्राथी श्रमिक व अन्य व्यक्तियों को जो चिकित्सा परीक्षण के लिये सीपी ई एक्स एम-1 दिया गया वे उनको खलासी के पद पर नियुक्ति देने के संबंध में दिया गया जिसके बारे में प्राथी श्रमिक ने धरना प्रिटेस्ट दिया था कि वह सदा से मेसन का कार्य कर रहा है उसे खलासी के पद पर क्यों नियुक्त किया जा रहा है। ये साक्ष्य प्रमाणित हो चुका है कि प्राथी ने सन् 1964 यानि 11-10-64 से बतौर क्लेण्डर नेबर के मेसन के पद पर कार्य प्रारम्भ किया और 13-1-81 तक ये कार्य करता रहा और इस विधि के दौरान वह 240 दिन से अधिक एक कलेण्डर वर्ष में निरन्तर कार्य कर लगातार काम करने वाला औद्योगिक कर्मकार हो गया था और वह उस समय 240-400 में वेतन प्राप्त कर रहा था। प्राथी श्रमिक ने अपने स्टेटमेंट ऑफ क्लेम में ये स्पष्ट तौर से लिखा है कि निर्माण निरीक्षक हनुमानगढ़ ने प्राथी श्रमिक जेटूसिंह की खलासी के पद वेतनमान 196-232 में कार्य करने के लिये मौखिक रूप में कहा था। इस प्रकार मेसन और खलासी के पद अलग अलग प्रमाणित हो जाते हैं और जब अप्राथी रेलवे प्रबंधकों ने प्राथी श्रमिक का मेसन के खलासी बनाने के लिये मांगी दिया व उसकी सेवा शर्तों में परिवर्तन किये जाने का एक कदम था और किसी औद्योगिक कर्मकार की सेवा शर्तों में उस समय तक परिवर्तन नहीं किया जा सकता जब तक कि उस परिवर्तन के लिये उसे नोटिस न दिया जाये। इस संबंध में औद्योगिक विवाद अधिनियम 1947 जिसे तत्पश्चात् अधिनियम लिखा जायेगा की धारा 9-ए काबिल गौर है। धारा 9-ए अधिनियम के मुताबिक कोई नियोजक किसी कर्मकार की सेवा शर्तों में परिवर्तन करना कि तजवीज करता है उन विषयों के संबंध में जो अधिनियम के चतुर्थ सेड्युल में दिये हैं तो उसमें वह बिना 21 दिन का नोटिस दिये ऐसा परिवर्तन नहीं कर सकते हैं। अधिनियम के चौथे सेड्युल में पहली सेवा शर्त और सातवीं सेवा शर्त क्लासिफिकेशन बाई ग्रेस के परिवर्तन इस विवाद में लागू होते हैं, गोदा कि रेलवे प्रशासन ने प्राथी श्रमिक को मेसन के पद की बजाय खलासी के पद पर जो लगाना तजवीज किया उसमें प्राथी श्रमिक के वेतन भत्तों में अन्तर पड़ता था, हमारे ग्रेड्स की क्लासिफिकेशन में परिवर्तन होना और वेतनभत्तों में कमी बेशी होना ये सेवा शर्तों में चौथे सेड्युल के अनुसार परिवर्तन करना था, ऐसी सूरत में धारा 9-ए में उल्लंघन में बिना नोटिस दिये सेवा शर्त बदलना गलत ही नहीं बल्कि अवैध था और इस अवैध आवेश को पालना जो प्राथी श्रमिक ने नहीं की वे अनुचित नहीं था। ई एक्स एम-2 व ई एक्स एम-3 से स्पष्ट है कि उसने बार-बार ये निवेदन किया कि वे मेसन के पद पर कार्य कर रहा है और उसे उसी पद पर रहने दिया जाये, मगर उसकी प्रार्थना का कोई गौर न कर अन्त में उसकी सेवा ही समाप्त कर दी गई है। इस प्रकार जो रेलवे की ओर से प्रतिरक्षा में ये प्लो की गई है कि प्राथी श्रमिक और मुतकाबिल पद के लिये आफर दी गई जो उसने स्वयं ने स्वीकार नहीं की ये गलत एवं अवैध थी और इसको स्वीकार नहीं करने के प्राथी के क्लेम में कोई अर्थ नहीं पड़ता।

हमने ये देखा है कि प्राथी की सेवा समाप्ति रिट्रेन्वमेंट की परिभाषा में आती है या नहीं। इस संबंध में अप्राथी नियोजकों की ओर से उपरोक्त प्लो ली गई कि रेलवे प्रबंधकगण ने प्राथी श्रमिक को खलासी के पद पर लेने के लिये पेशकश की थी और इस स्वयं ने इस पद पर जाने के लिये

हंकार किया और वह स्वयं भी नौकरी छोड़ कर चला गया मगर फिर कभी काम पर नहीं लौटा। इसके मुकाबले में प्रार्थी ने उसके शपथ पत्र में ये व्यक्ति किया है कि वह रेलवे कार्य पर उपस्थित हुआ, दिनांक 14-1-81 व 15-1-81 को उसे मेसन कार्य नहीं किया गया और दिनांक 16-1-81 के बाद दोपहर प्रार्थी श्रमिक को सीखिक आवेश से कह दिया गया कि श्रमिक की सेवा समाप्त की जाती है। अप्रार्थी रेलवे के गवाह अलबैन सिंह की साक्ष्य से ये प्रमाणित हो जाता है कि दिनांक 14-1-81 के बाद प्रार्थी श्रमिक जिस टी एम ए के तहत काम पर रहा था, वह खत्म हो गया और टी एम ए की समाप्ति पर उसकी सेवा समाप्त हो गयी। जब टी एम ए की समाप्ति पर प्रार्थी श्रमिक की सेवा समाप्त हो गयी तो प्रार्थी के द्वारा स्वयं नौकरी छोड़ कर जाना नहीं कहा जा सकता ऐसा कुछ प्रमाणित नहीं कराया गया है कि प्रार्थी श्रमिक और अप्रार्थी रेलवे प्रबंधकों के बीच कोई ऐसा मुद्दा था कि 14-1-81 के पश्चात प्रार्थी श्रमिक की सेवा समाप्त हो जायेगी। सन् 1981 में जो ये शर्त कि एक विशेष अवधि के लिये मुद्दा हो और उस अवधि की समाप्ति पर सेवा समाप्ति मुद्दा के अनुसार रिट्रेन्समेंट की परिभाषा में नहीं आयेगी ये शर्तवैध धारा 2 (प्रो. प्रो.) व (बी. बी.) को सन् 1984 में इन्डोइयूज की गई ये एक्सप्लेन सन् 81 में थी भी नहीं इस कारण से अखिल तो ऐसा कोई मुद्दा या प्रार्थी श्रमिक और नियोजक के मध्य प्रमाणित नहीं कराया गया है कि टी एम ए की समाप्ति पर प्रार्थी श्रमिक की सेवा स्वयः समाप्त हो जायेगी। दूसरे ये एक्सप्लेन सन् 1981 में रिट्रेन्समेंट की परिभाषा में नहीं था। रिट्रेन्समेंट की यानि छंटनी की परिभाषा में किसी प्रकार भी सेवा समाप्त की जाती है सिवाय इसके कि श्रमिक सुपर अन्वेषण पर नौकरी समाप्त होती है लगाना बीमार रहने के कारण या कि किसी अनुशासनात्मक कार्यवाही के रूप में सेवा समाप्त की जाती है या स्वेच्छा से सेवानिवृत्त होने के अलावा, ये तीन ही ऐसे अवस्था हैं जिसमें कि सेवा समाप्ति छंटनी की परिभाषा में नहीं आती थी ऐसी सूरत में अप्रार्थी प्रबंधकरण की ओर से ये प्रमाणित नहीं कराया जा सका कि प्रार्थी श्रमिक स्वयं नौकरी छोड़ेगा या और उसकी सेवा समाप्ति छंटनी की परिभाषा में नहीं आती है। प्रार्थी श्रमिक को टी एम ए की समाप्ति पर सेवा समाप्त की गई तो भी वह छंटनी की परिभाषा में आती है और इस प्रकार धारा 25-एफ के उल्लंघन में सेवा समाप्ति का नोटिस न देना या नोटिस अवधि का वेतन न देना एवं छंटनी का मुद्दा जाना न देना केन्द्रीय सरकार की छंटनी के बारे में सूचित न करना इससे प्रार्थी श्रमिक को हटाना अवैध रहता है यद्यपि मौजूदा रेफरेंस में छंटनी के किये जाने या छंटनी अवैध होने निर्देशन में प्रकृत नहीं किया गया है। ये रेफरेंस प्रार्थी श्रमिक को मेसन के कांडर में स्थायी न किये जाने के संबंध में निर्देशित किया गया है मगर साक्ष्य में प्रार्थी में ये प्रमाणित हो चुका है कि प्रार्थी श्रमिक दिनांक 10-10-64 से 13-1-81 तक इसने लम्बे अर्से में वह मेसन का कार्य करता रहा है और इसकी कोई चुनौती रेलवे की ओर से नहीं दी गई है। इतने लम्बे अर्से तक कार्य करते रहने के पश्चात प्रार्थी श्रमिक को मेसन के पद पर स्थायी न करने और उसकी ग्रेड यानि वेतनमान 260-400 न देने अनफेयर लेबर प्रैक्टिस की परिभाषा में आता है और उसकी मेसन की अपेक्षा खलासी के पद पर वेतनमान 196-232 में पद देना की पेशकश अवैध थी। ऐसी सूरत में प्रार्थी श्रमिक की जो मेसन पद पर वेतनमान 260-400 में नहीं लगाये रखा गया वो गलत एवं अनुचित या प्रार्थी श्रमिक आर्थिक मेसन से मेसन के स्थायी कांडर में बतौर मेसन वेतनमान 260-400 में स्थायी किये जाने का अधिकारी था और ऐसा न कर जो उसे सेवा मुक्त कर दिया गया वह भी स्थाय संगत नहीं था। उपरोक्त उठाये गये प्रश्न को प्रार्थी श्रमिक के हित में इसी प्रकार निर्णीत किया जाता है कि चूंकि प्रार्थी ने अपनी, साक्ष्य में ये माना है कि उसे मजदूरी मिल जाती है तो वह कर लेता है कभी 20 रुपये मजदूरी हो जाती है, कभी 30 रुपये भी रोजाना हो जाती है, मजदूरी उसे हमेशा नहीं मिलती है। इसको देखते हुए यह जचित एवं न्याय संगत होगा कि प्रार्थी की सेवा में बहाल करके उसे 50 प्रतिशत वेतन बोनस दिलाये जाये।

अतः उपरोक्त विवेचन के आधार पर प्रार्थी श्रमिक के हक में अवार्ड निम्न प्रकार से पारित किया जाता है।

यह कि श्री जे.सिंह पुत्र श्री सुन्दरसिंह आकस्मिक मेसन की मेसन के स्थायी कांडर में मेसन के पद व वेतनमान 260-400 में नियमित न करना अनुचित एवं गलत या प्रार्थी की सन् 1964 से 13-1-81 तक कार्य कर लेने की देखते हुए उसे मेसन के पद पर वेतनमान 260-400 में नियमित करना उचित एवं वैध है। अतः प्रार्थी की सेवा में बहाल कर उसे सेवा समाप्ति से पूर्व पद मेसन वेतनमान 260-400 में पुनः लगाया जावे। सेवा समाप्ति के दिनांक 13-1-81 से प्राप्त कि जाने की तिथि तक का 50 प्रतिशत वेतन भत्ता बतौर ऐरियर उसे दिया जायेगा। इसके अतिरिक्त यदि कोई अन्य लाभ और साबित हुए हों तो भी वह पाने का अधिकारी होगा।

अवार्ड की प्रतिलिपि केन्द्रीय सरकार का अन्तर्गत धारा 17(1) अधिनियम वास्ते प्रकाशनाय भेजा जाये।

दिनांक : 27-10-89

प्रताप सिंह यादव, न्यायाधीश
[मं. एल-41012/30/83-डी II (बी)भाग]

का.प्र. 499—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे बीकानेर के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-90 को प्राप्त हुआ था।

S.O. 499.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Bikaner and their workmen, which was received by the Central Government on 31-1-90.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.जे.एस. केस नं. सी.आई.टी. 27/84

जनरल सैक्रेटरी रेलवे केजुधल लेबर यूनियन नार्दन रेलवे, डाया स्कूल के पास, बीकानेर।

बताम

डिबोर्जनल पर्सनल आफिसर, नार्दन रेलवे, बीकानेर।

रेफरेंस अन्तर्गत धारा 10(1)(डी) औद्योगिक विवाद अधिनियम, 1947

उपस्थित

प्रार्थी यूनियन की ओर से : श्री अरविन्द सिंह
अप्रार्थी नियोजक की ओर से : श्री एल.सी. मेहरा
दिनांक अवार्ड : 26-5-89

अवार्ड

भारत सरकार श्रम मंत्रालय के हेड अधिकारी ने उनकी आज्ञा नं. एल. 41012(26) 83-डी.-2(बी) दिनांक 13-1-84 निम्न विवाद अन्तर्गत धारा 10(1) (डी) औद्योगिक विवाद अधिनियम जिसे तत्पश्चात अधिनियम लिखा जायेगा वास्ते अधिनिर्णयार्थ इस न्यायाधिकरण को प्रेरित किया है—

"Whether the action of Northern Railway in relation to their Bikaner Division; Bikaner in terminating the services of Shri Lal Singh S/o Shri Padam Singh,

casual labour with effect from 14th May, 1982 is justified? If not, to what relief is Shri Lal Singh entitled?"

2. बाबू प्राप्ति रैफरेंस इस न्यायाधिकरण में पंजीकृत किया गया। उभय पक्षकारणों की नोटिस जिरफ़ पंजीकृत डाक भेजे गये। प्राप्ति लाल सिंह ने जिरफ़े उनके अधिभूत प्रतिनिधि श्री भरत सिंह स्टेट में आफ क्लेम दिनांक 20-9-84 को निम्न प्रकार से प्रस्तुत किया। बाकिवाल प्रकरण जैसा कि स्टेटमेंट आफ क्लेम से जाहिर आये समुचित में निम्न प्रकार है। यह कि कर्मकार लाल सिंह पुत्र श्री पवन सिंह 11-7-78 को उत्तर रेलवे में बतौर केजुअल श्रमिक के सूरतगढ़ में लगाया। दिनांक 1-8-80 से 14-5-82 तक उसने नौदैन रेलवे सूरतगढ़ में खलासी के पद पर कार्य किया। दिनांक 14-5-82 को श्रमिक लाल सिंह की सेवा जबानी आदेश से लोको फोरमैन सूरतगढ़ ने समाप्त कर दी परन्तु उसे सेवा समाप्ति का नोटिस नहीं दिया न ही कोई छंटनी का मुद्रायोजन दिया और नही उन जैसे कर्मचारियों का डेजिजन-वार्डन वरिष्ठता सूची बनाई गई। उसकी छंटनी बाबत भारत सरकार की सूचना भी नहीं दी गई उसने उसके स्टेटमेंट आफ क्लेम में यह भी अधिवचन रखा कि प्राप्ति कर्मचारी ने उसे सेवा से हटाने से पूर्व एक कलेंडर वर्ष में 240 दिन से अधिक निरन्तर कार्य कर लिया था। इसलिए उसकी सेवा समाप्ति धारा 25एफ और 25सी के उल्लंघन में की गई। इस प्रकार प्राप्ति ने उसकी सेवा समाप्ति गलत तौर से की जाना व्यक्त किया। अतः प्राप्ति कर्मचारी ने उसकी सेवा समाप्ति अवधि से उसे पुनः सेवा में लिये जाने के साथ पूरे वेतन व भत्ता सहित बहाल किये जाने की प्रार्थना की। एवं यह भी प्रार्थना की कि उसे अन्य देश लात सहित और अनुतोष भी बिनाया जाये।

3. अप्राप्ति निवोजगन की ओर से उत्तर क्लेम मंडल कामिक अधिकारी की ओर से इस प्रकार पेश किया गया कि प्राप्ति श्रमिक को बतौर पानी वाले को सूरतगढ़ में 11-7-78 से 1-8-78 तक लगाया गया। यह रिफ़ाई का विषय है जिसके बारे में प्राप्ति अपना सतत पेश करे। आगे यह भी एनराज लिया कि प्राप्ति ने उसके प्रार्थना पत्र में इस बात का वर्णन नहीं किया है कि परमानेंट वे इन्सपेक्टर सूरतगढ़ ने कब और कहां प्राप्ति को लगा रखा है। इसका वर्णन प्रार्थनापत्र में स्पष्ट तौर से नहीं किया गया है। तो हम हतास स्वीकार किया कि प्राप्ति को 1-9-80 को बतौर खलासी के लोको फोरमैन सूरतगढ़ के तहत लगाया था परन्तु यह नकारा कि उसने 14-5-82 तक कार्य किया और आगे यह व्यक्त किया कि वास्तविक तथ्य यह है कि प्राप्ति श्रमिक के बतौर आकस्मिक श्रमिक के टी.एल.ए. की स्वीकृति पर समय समय पर लगाया गया और बीच में ब्रेक्स दिये गये और उसने 15-5-82 तक कार्य किया। इस बात को भी नकारा कि प्राप्ति श्रमिक की सेवायें लोको फोरमैन उत्तर रेलवे सूरतगढ़ ने समाप्त की। अतः यह भी अधिवचन रखा कि प्राप्ति श्रमिक की सेवायें बिना अनधिकृत रूप से समाप्त नहीं की गई इसलिए उसकी छंटनी किये जाने का प्रयत्न नहीं उठता है। यह भी व्यक्त किया कि वास्तविक बात यह है कि टी.एल.ए. की समाप्ति पर उसकी सेवायें स्वतः ही समाप्त हो गई। इसने प्रार्थना की कि प्राप्ति श्रमिक कोई अनुतोष पाने का अधिकारी नहीं है।

4. प्राप्ति श्रमिक श्री लाल सिंह ने अपने क्लेम की संपुष्टि में स्वयं का शपथपत्र पेश किया जिसे इस न्यायाधिकरण द्वारा स्वीकृत किया गया। योग्य अधिवक्ता अप्राप्ति रेलवे ने लाल सिंह से जिरफ़ की उसको सहसुचारित रेलवे की ओर से श्री जन्मभान रोहिल्ला एवं श्री सी.बी. रोहिल्ला साक्ष्य में पेश हुए। मैंने बहुत योग्य अधिभूत प्रतिनिधि प्राप्ति एवं योग्य अधिवक्ता अप्राप्ति रेलवे सुनी है। पतावली का ध्यानपूर्वक अवलोकन किया है। इस न्यायाधिकरण के समक्ष यह विचारणीय प्रश्न है कि :—

- (1) आया प्राप्ति श्रमिक लाल सिंह सेवा समाप्ति दिनांक 14-5-82 से एक कलेंडर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाला औद्योगिक कर्मकार हो गया या?

- (2) उसकी सेवा समाप्ति अवधि छंटनी की परिभाषा में आती है?

- (3) अनुतोष।

5. उपरोक्त प्रश्नों को निर्णीत करने के लिए हम पतावली पर यहां दृष्टि साक्ष्य को गौर करना है। प्रथम बिनाग बिन्दु के संबंध में प्राप्ति श्रमिक लाल सिंह की साक्ष्य को गौर करते हैं। श्रमिक लाल सिंह ने उसके शपथ पत्र में व्यक्त किया कि वह दिनांक 11-7-78 को रेलवे सेवा में बतौर केजुअल श्रमिक (वाटर मैन) सूरतगढ़ जं. पर नियुक्त हुआ और उसने दिनांक 1-8-78 तक कार्य किया। आगे व्यक्त किया कि दिनांक 1-8-80 से 14-5-82 तक उसने उत्तर रेलवे लोको शेड सूरतगढ़ जिवा गंगानगर में बतौर केजुअल नेबर खलासा के पद पर उसे नियुक्त रखा गया और उसे दिनांक 18-10-81 से बेतनमान 196-2321 दिया गया। आगे यह भी व्यक्त किया कि उसने एक कलेंडर वर्ष में 240 दिन से अधिक कार्य किया और इस प्रकार वह लगातार काम करने वाला औद्योगिक कर्मकार हो गया। आगे शपथ पूर्व व्यक्त किया कि दिनांक 14-5-82 के बाद दीपहर से लोको फोरमैन उत्तर रेलवे सूरतगढ़ ने उसकी सेवायें अवधि एवं अनधिकृत रूप से समाप्त कर दी। श्री सी.बी. रोहिल्ला ने यह व्यक्त किया कि दिनांक 1-8-80 से 14-5-82 के दौरान यानि 1-8-80 से 30-7-81 तक वह उत्तरी रेलवे दिल्ली डिवीजन के लोकोषेड भटिण्डा में कार्यरत रहा और 31-7-81 से 14-5-82 तक वह लोकोषेड सूरतगढ़ में लोको फोरमैन के पद पर कार्यरत रहा। जिस समय उसने लोको फोरमैन सूरतगढ़ का नौदैन लात लाल सिंह वहां कार्यरत था जो बतौर आकस्मिक श्रमिक के कार्य कर रहा था। जिसका टी.एल.ए. 15 दिन का आता था। इस गराह ने जिरफ़ में स्वीकार किया कि दिनांक 14-5-81 से 14-5-82 तक आल मिह ने 252 दिन कार्य किया। श्री सी.बी. रोहिल्ला की साक्ष्य से ही यह तो प्रमाणित हो जाता है कि प्राप्ति श्रमिक ने उसकी सेवा समाप्ति से पूर्व एक कलेंडर वर्ष में 240 दिन से अधिक निरन्तर कार्य किया तथा अनन्तर हटना ही उसके बयान में आया है कि प्राप्ति ने उसकी सेवा समाप्ति 14-5-82 को जबानी आदेश से किया जाना कहा है जबकि श्री सी.बी. रोहिल्ला ने प्राप्ति की सेवा समाप्ति 15-5-82 को किया जाना कहा है और उनके द्वारा पेश किये गये कार्य दिवसों के नौदैन में भी अंतिम कार्य दिवस 15-5-82 दिखाया गया है। मगर श्री सी.बी. रोहिल्ला का यह कथन कि प्राप्ति ने 15-5-82 तक कार्य किया इसलिए सही प्रतीत नहीं होता कि उनकी रोकनीयता प्रोवोक्शन में इस तथ्य को कहीं कहा जाना जाहिर नहीं है। रैफरेंस में श्री लाल सिंह की सेवा समाप्ति की तिथि 14-5-82 लिखी गई है। यदि रेलवे की ओर से समझौता बार्ता में सेवा समाप्ति की तिथि दिनांक 15-5-82 बताई जाती तो अवधि 15-5-82 का उल्लेख प्राप्ति सनर रैफरेंस में 14-5-82 की सेवा समाप्ति किये जाने के उल्लेख से यह स्पष्ट है कि अप्राप्ति रेलवे की ओर से यह स्टैंड बाद में बदला गया है और कार्य दिवस एक दिन बढ़ाकर 15-5-82 व्यक्त किया गया है। इस संबंध में प्राप्ति लाल सिंह का बयान कन्सिस्टेंट है उसने अपने मुख्य परीक्षण में स्पष्ट तौर से उसकी सेवा समाप्ति की तिथि 14-5-82 व्यक्त की है और पुनः प्रतिपरीक्षण में भी उसने 14-5-82 को दोहरा बाबू हटाना कहा है। उनसे ऐसा कोई मुझाब जिरफ़ में नहीं कहा गया कि उसने 15-5-82 का भी कार्य किया। इस प्रकार के मुझाब के आधार पर प्राप्ति लाल सिंह का कथन गलत एवं विश्वसनीय है और उसके कथनानुसार यह स्वीकारनीय है कि अप्राप्ति लोको फोरमैन सूरतगढ़ ने उसकी सेवा समाप्ति 14-5-82 को दोहरा बाद कर दी। इस प्रकार प्राप्ति लाल सिंह की साक्ष्य से यह बतूरी प्रमाणित हो जाता है कि प्राप्ति लाल सिंह ने उसकी सेवा समाप्ति की तिथि 14-5-82 से एक वर्ष पूर्व यानि एक कलेंडर वर्ष में 240 दिन से अधिक निरन्तर कार्य किया और वह इस प्रकार निरन्तर कार्य करने वाला औद्योगिक

कर्मकार हो गया था। इस प्रकार प्रथम बिन्दु उसके पक्ष में निश्चित किया जाता है।

6. द्वितीय विचार बिन्दु उसकी अवैध रूप से सेवा समाप्ति के संबंध में है। इस बारे में पुनः प्रार्थी लाल सिंह के उसके शपथ पत्र में यह कहा है कि अवैध रूप से सेवा 14-5-82 को समाप्त कर दी गई इसको मुझे मुकाबिले अप्रार्थी रेलवे प्रबंधक तंत्र की ओर से यह प्नी ली गई है कि 15-15 दिन का टी.एल.ए. आता था और टी.एल.ए. की समाप्ति पर उसकी सेवा स्वतः ही समाप्त हो जाती थी। इसलिए प्रार्थी स्वयं के न आने के कारण उसकी सेवा समाप्ति नहीं थी बल्कि वह स्वयं नौकरी पर नहीं आया। और यह छंटनी की परिभाषा में नहीं आती है। मैं योग्य अधिवक्ता अप्रार्थी रेलवे की बहस से सहमत नहीं हूँ। अजबल मो रेलवे की ओर से उस टी.एल.ए. की प्रति न्यायालय में पेश नहीं की गई है जिस पर कर्मचारी ने ऐसा नोट कराया गया हो कि यह टी.एल.ए. अमुक दिन के लिए ही था और उसकी समाप्ति पर उसकी सेवा स्वयं समाप्त हो जायेगी। रेलवे के गवाह ने यह माना है कि टी.एल.ए., डी.एम.ई. स्केल करता है। डी. म.ई. और लालसिंह के बीच ऐसा कई मुद्दायदा या झंझट स्ट्रेडिंग नहीं थी कि टी. ए. की समाप्ति पर उसकी सेवा समाप्त हो जायेगी। इस प्रकार के मुद्दायदे के न होने की सूचना में यह स्वीकारनीय नहीं है कि इस प्रकार का प्रार्थी और रेलवे के मध्य यह तथ्य था कि टी.एल.ए. की समाप्ति पर उसकी सेवा समाप्ति हो जायेगी। प्रार्थी स्वयं ने इस मुद्दाय को अपनी जिरह में कि वह स्वयं नौकरी छोड़कर खला गया। बल्कि उसने इसके हत शब्दों में स्पष्ट किया है कि "ऐसा कौन होगा जो नौकरी छोड़कर जायेगा" गोया कि प्रार्थी का यह बहाना था कि ऐसा कोई व्यक्ति नहीं हो सकता कि इस प्रकार स्वयं नौकरी छोड़कर जाये। इसलिये प्रार्थी स्वयं ने इसको मना किया है कि उसने स्वयं से नौकरी छोड़ी थी। चूंकि प्रार्थी की सेवा समाप्ति से पूर्व जो एक यह का नोटिस नहीं दिया गया है न इसकी एवज में उसे कोई वेतन न दिया गया है और न छंटनी का कोई मुद्दायदा ही दिया गया ऐसी सूचना में दिनांक 14-5-87 को उसकी सेवा समाप्त करना छंटनी की ही परिभाषा में पड़ी आती है बल्कि अवैध छंटनी पाई जाती है। जिससे धारा 25(एफ) औद्योगिक विवाद अधिनियम का खुले-आम उल्लंघन पाया जाता है। इसके अतिरिक्त अप्रार्थी रेलवे की ओर से बरिष्ठता सूची के बारे में यह कहा गया है कि दिनांक 24-10-85 को उन्होंने एक बरिष्ठता सूची निकाली थी जो उन्होंने लोकोमोटिव के बोर्ड पर लगाई थी। यहाँ सीनियोरिटी लिस्ट 24-10-82 को निकालना कहा है जबकि प्रार्थी की सेवा 24-5-87 के पहले ही समाप्त कर दी थी। इस प्रकार प्रार्थी श्रमिक की सेवा समाप्ति के पांच महीने 10 दिन बाद सीनियोरिटी लिस्ट निकालने का कोई मतलब नहीं है। यह भी साक्ष्य से प्रमाणित है कि प्रार्थी लालसिंह की सेवा समाप्ति करने समय भारत सरकार की छंटनी की सूचना नहीं दी गई और यह प्रमाणित हो चुका है कि प्रार्थी लालसिंह जैसे श्रमिकों की बरिष्ठता सूची उसे हटाने से पहले घोषित नहीं की गई न उसे छंटनी का मुद्दायदा दिया गया इस प्रकार प्रार्थी श्रमिक लालसिंह की सेवा समाप्ति धारा 25एफ, 25जी और औद्योगिक विवाद नियम (केन्द्रीय) नियम 77 के विरुद्ध की गई है। इस कारण से यह सेवा समाप्ति अवैध एवं अनुचित तौर पर की गई है। प्रार्थी पुनः सेवा में सेवा समाप्ति से पूर्व वाले पद व वेतन पर बहाल होने योग्य पाया जाता है।

7. अनुतोष

अवार्ड

आज्ञा है कि उत्तर रेलवे बीकानेर के रेलवे डिप्टी जून बीकानेर के प्रबंध तंत्र ने श्रमिक लालसिंह पुत्र श्री पदमसिंह आकास्मिक श्रमिक की सेवायें जो 14-5-82 से समाप्त की थी व अनुचित एवं अवैध थी। प्रार्थी श्रमिक लालसिंह सेवा समाप्ति की तिथि के बाद 15-5-82 से पुनः सेवा में बहाल होने का अधिकारी है। दिनांक 15-5-82 से सेवा में बहाल किये जाने की तिथि तक सेवा समाप्ति से पूर्व के पक्ष का वेतन अन्य भत्तों सहित प्राप्त करने का अधिकारी है और इस दुरासत यदि कोई अन्य लाभ भोजित हुए हैं तो वह भी प्राप्त करना इसका मेरा निवेदन माना जावेगा। उक्त आक्षेप

का पूर्वापारित किया जाता है जिसे केन्द्र सरकार को ताम्ने प्रमाणनार्थ अंतर्गत धारा 17(1) औद्योगिक विवाद अधिनियम 1947 भेजा जावे।

प्रताप सिंह यादव, न्यायाधीश
[मं. एल.-41012/26/83-डी. II (बी) (आम)]

नई दिल्ली, 7 फरवरी, 1990

का. आ. 500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिप्टी जूनल जूनियर, टेलेग्राफ्स, पी.एंड टी., बीकानेर के प्रबंधन तंत्र के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-90 को प्राप्त हुआ था।

New Delhi, the 7th February, 1990

S.O. 500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Engineer Telegraphs, P&T, Bikaner and their workmen, which was received by the Central Government on 31-1-90.

परिशिष्ट

मध्य

डीप्टी जूनल जूनियर, टेलेग्राफ्स, पी.एंड टी, बीकानेर
बनाम

वाईस प्रेसिडेंट, आर. सी.एल.यू., बीकानेर
रेफरेंस अंतर्गत धारा 10(1) (डी) औद्योगिक
नियम, 1947

उपस्थिति

श्रमिक की ओर से : श्रीधरविंद सिंह
नियोजक की ओर से : श्री जोगेंद्र सिंह
दिनांक : अवार्ड : 20-7-89

अवार्ड

भारत सरकार के श्रम मंत्रालय के डेस्क अधिकारी ने उनकी आज्ञा सं. एल.-41011(23) 84-डी. II (बी) दिनांक 26-3-85 के द्वारा निम्न व्यक्तियों के संबंध में निम्न विवाद अंतर्गत धारा 10(1) (डी) औद्योगिक अधिनियम 1947, जिसे आगे अधिनियम लिखा जायेगा वास्ते अधिनियम हेतु इस न्यायाधिकरण को प्रेषित किया है—

"Whether the Divisional Engineer (Telegraphs) P&T, Bikaner is justified in not granting the regular pay scale of Rs. 196—232 to the following 16 workers, who have put in more than 2 years continuous service with the DGP&T? If not, what relief these 16 workers are entitled to?"

2. बाद प्राप्त निर्देशन इसे इस न्यायाधिकरण में पंजीकृत किया गया है। उभय पक्षकारण को नोटिस जारी किये गये। नोटिस जारी करने के पश्चात् श्री धरविंद सिंह सैनार उपाध्यक्ष लेबर केजुअल लेबर यूनियन डाक स्कूल के पास यूनियन ने इस्टेब्लिशमेंट आफ क्लेस इन तथ्यों सहित प्रस्तुत किया। यह कि इन निर्देशन में अंकित 16 व्यक्तियों का टेलेग्राफ विभाग में मंडल अभियंता (तार) बीकानेर मंडल बीकानेर के

यह कार्य होना था कि 16 यात्रियों के संबंध में उनकी प्रथम नियुक्ति की तारीख व 240 दिन पूरे होने का ब्यौरा दिया। यह कि निर्देशन में प्रकृत 16 व्यक्ति विनांक 12-6-81 से वेतनमान 196-232 पाने का अधिकारी होना व्यक्त किया आगे यह व्यक्त किया कि उपरोक्त श्रमिकों ने उनके नियोजक मंडल अभियंता (टेलीग्राम) बीकानेर मंडल से बार बार निर्देशन किया कि उन्हें दो वर्ष सेवा पूरी करने के आधार पर नियमित कर्मचारी बनाकर वेतनमान 196-232 में वेतन भत्ता दिया जावे। अतः स्टेटमेंट आफ क्लेम प्रस्तुत कर निर्देशन किया कि कर्मचारी की प्रथम नियुक्ति की दिनांक से वेतनमान 196-232 में नियमित रूप से वेतन भत्ता देने का अर्वाह पारित किया जावे। अप्रार्थी डीजीनल इंजीनियर (टेलीग्राम) बीकानेर मंडल बीकानेर के अधिवक्ता ने 22-3-86 को प्रार्थनार्थक आपत्ति उठाते हुए एक प्रार्थना पत्र पेश किया। जिसका प्रार्थी यूनियन की ओर से जवाब प्रस्तुत हुआ। उसके पश्चात् 20-5-87 को अप्रार्थी डीजीनल इंजीनियर (टेलीग्राम) बीकानेर की ओर से क्लेम का उत्तर निम्न प्रकार से प्रस्तुत किया यह कि प्रार्थीगण। लगातार 16 (कं. सं. 11) को छोड़कर सभी आकस्मिक मजदूरों के रूप में दैनिक वेतन कार्य करने के लिए अस्थाई तौर पर रखा था जो बीकानेर डीजीनल के उपमंडल अधिकारी (तार) बीकानेर व चुग के अधीन इन्होंने पाटियों में काम किया। इनमें से क्रम सं. 2 अंगद प्रसाद क्रम सं. 6 अमृल रसीव एवं क्र.सं. 12 के शोकतथनी के तब स्टेटमेंट आफ क्लेम में से विवाद करना चाहता है और उनके व अप्रार्थी के बीच किसी प्रकार का कोई विवाद नहीं रह गया है एवं निर्देशन में प्रकृत क्र.सं. 7, 8, 9, 11, 13, 14, 15 एवं 16 काम छोड़कर दूसरी जगह काम मिलने पर चले गये हैं। आगे यह भी व्यक्त किया कि समय समय पर केजुमल मजदूरों की मजदूरी बढ़ाई जाती रही है और यह व्यक्त किया कि प्रार्थी श्रमिकगण निमित्त वेतनमान दिये जाने का कोई केस नहीं है और उनका क्लेम खारिज करने की प्रार्थना की।

3. स्टेटमेंट आफ क्लेम का उत्तर प्रस्तुत होने को बाव प्रार्थी गण के अधिकृत प्रतिनिधि को वस्तावेज व साक्ष्य पेश करने की लिए 13 अक्सर दिये गये परन्तु न तो कोई वस्तावेज पेश किये और न ही कोई वाद प्रस्तुत की। आज भी प्रार्थी यूनियन की कोई साक्ष्य नहीं है उनके अधिकृत प्रतिनिधि से इस संबंध में पूछा गया तो उन्होंने जाहिर किया कि उन्होंने अनेक बार श्रमिकों को पत्र लिखे हैं वे सूचनयों की हैं मगर बावजूद सूचना देने के उनके इस कोई हिदायत पर भी अब नहीं धाई है। इतना अक्सर दिये जाने के पश्चात् भी साक्ष्य प्रस्तुत नहीं की जा रही है इससे ऐसा प्रतीत होता है कि प्रार्थी यूनियन के पास कोई साक्ष्य इस संबंध में उपलब्ध नहीं है और वह प्रकरण को आगे चलाने में रुचि नहीं रखते हैं या पक्षकारान के मध्य अब कोई विवाद शेष नहीं रह गया है अतः सारी कार्यवाही को देखते हुए में यह उचित व न्यायसंगत समझता हूं कि मौजूदा विवाद में नो डिस्पूट अर्वाह पारित किया जाये। अतः नो डिस्पूट अर्वाह पारित किया जाता है जिसे बास्ते प्रकाशनार्थ अंतर्गत धारा 18(1) अधिनियम भेजा जावे।

प्रताप सिंह यादव, न्यायाधीश
[(नं. एल.-4101/23/84-डी II (बी) (पं.)]

का.आ.501—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार सुपरिस्टैंडेंट, पोस्ट आफिस, भीलवाड़ा, के प्रमुखतन्त्र के सम्मन्ध नियोजकों और उनके कर्मचारों के बीच, अन्तर्गत में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट की प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-90 को प्राप्त हुआ था।

S.O. 501.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Supdt. of Post Office, Bhilwara and their workman, which was received by the Central Government on 31-1-90.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.जे.एस.

केस नं. सोआईटा 21/89

मध्य

हरमजन सिंह मार्फत ताराकिह कुम्हारों का अधिनियम
रावण को बर्गाचा प्रवेन

बनाम

सुपरिस्टैंडेंट, पोस्ट आफिस, भीलवाड़ा डीजीनल, भीलवाड़ा

रेफरेंस अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम 1947

उपस्थिति

श्रमिक पक्ष की ओर से: कोई उपस्थित नहीं।

नियोजक पक्ष की ओर से: श्री रामेश्वर प्रसाद सौनी अधीक्षक

दिनांक अर्वाह: 18-8-89

अर्वाह

श्रम मंत्रालय भारत सरकार को डेस्क अधिकारी ने उनके आदेश सं. एल-40012/38/87-डी-2(बी) विनांक 23-1-89 निम्न विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम जिसे सम्पत्तित्व अधिनियम लिखा जायेगा, इस न्यायाधिकरण का वास्ते अधिनियमार्थ प्रेषित किया है: -

"Whether in action of the Superintendent Post Offices, Bhilwara in removing from service Shri Harbhajan Singh, Postal Assistant, Bhilwara, HPO with effect from 1st October, 1986 is justified and legal? If not, to what relief is the workman entitled?"

2. बाव प्राप्ति निर्देशन इस न्यायाधिकरण में पंजीकृत किया गया और उचित पक्षकारान को नोटिस जारी किये गये। श्री हरमजन का नोटिस प्राप्त हुआ और उनको नोटिस प्राप्ति स्वीकृति वापिस इस न्यायाधिकरण में प्राप्त हुई। इसी प्रकार अधीक्षक पोस्ट ऑफिस भीलवाड़ा को भी नोटिस प्राप्त हुआ और श्री रामेश्वर प्रसाद सौनी अधीक्षक स्वयं उपस्थित आये हैं विनांक 15-7-89 को श्री हरमजन सिंह स्वयं उपस्थित आये और स्टेटमेंट आफ क्लेम प्रस्तुत करने के लिए वकील नियुक्त करने की प्रार्थना की जो स्वीकार की गई। आज प्रार्थी हरमजन बावजूद नोटिस प्राप्ति के एवं बावजूद न्यायालय की स्वीकृति प्राप्ति के हाजिर नहीं आया है श्री रामेश्वर प्रसाद ने यह भी जाहिर किया कि प्रार्थी श्रमिक ने केन्द्रीय प्रशासनिक अधिकरण में केस दायर कर दिया है और वह जानबूझ कर इस प्रकरण में रुचि नहीं ले रहा है इसलिए इस केस में नो डिस्पूट अर्वाह पारित किया जावे। बावजूद माफूल प्रतीत होती है। प्रार्थी श्रमिक को पहले तीन मोंके दिये जा चुके हैं और यह निर्देशन इस न्यायाधिकरण के समक्ष 31-1-89 को प्राप्त हुआ था जिसकी प्रतिलिपि स्वयं प्रार्थी श्रमिक को दी गई थी। मगर इस कदर अक्सर दिये जाने के पश्चात् भी प्रार्थी श्रमिक ने कोई रुचि इस रेफरेंस को आगे चलाने में नहीं ली है। इन सभी परिस्थितियों को देखते हुए माम हाजा में नो डिस्पूट अर्वाह पारित किया जाना उचित एवं न्यायसंगत प्रतीत होता है अतः रेफरेंस सं. 21/89 के संबंध में नो डिस्पूट अर्वाह पारित किया जाता है अर्वाह धारा 17(1) अधिनियम के तहत बास्ते प्रकाशनार्थ केन्द्रीय सरकार को भेजा जाये।

[नं. एल-40012/38/87-डी II (बी)]

हरमोजि सिंह, डेस्क अधिकारी

प्रताप सिंह यादव, न्यायालय